

Overview, Labor Relations

1. Part 2



Selection of Bargaining Representatives



- Modes of determining the Bargaining Representative in the appropriate bargaining unit
- Procedures in SEBA Certification, Certification Election
- Rules pertaining to conduct of elections



Certification and Consent Election

- ▶ Prior to SEBA Certification –Voluntary Recognition: Employer recognizes a legitimate labor organization as the **EXCLUSIVE BARGAINING REPRESENTATIVE** of the employees in the appropriate bargaining unit (ABU);
- ▶ Majority of employees in the ABU must support the labor organization



Request for SEBA Certification (DO 40-I-03 – Procedure

- ▶ **Where to file:** DOLE Regional Office which issued its certificate of registration or certificate of creation of chartered local.
- ▶ **Requirements:** The request shall indicate:
 1. The name and address of the requesting legitimate labor organization;
 2. The name and address of the company where it operates;
 3. The bargaining unit sought to be represented;
 4. The approximate number of employees in the bargaining unit; and
 5. The statement of the existence/non-existence of other labor organizations/CBA
 6. Certificate of registration, duly certified by the president of the requesting union or the certificate of creation of chartered local as duly certified by the president of the federation of the local



SEBA Certification

- ▶ DOLE-RO to determine
 - Completeness of request for SEBA Cert. application
 - W/N establishment is organized
 - Direct submission of payroll for purposes of SEBA certification
- ▶ Effect of SEBA Certification
 - LLO shall enjoy all rights and privileges of exclusive bargaining agent
 - Bar filing of petition for certification election for a period of one year from date of issuance



Collective Bargaining Agreement

- ▶ **Effect of SEBA Certification**
- ▶ 1. Upon the issuance of the certification as SEBA, 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.
- ▶ 2. The certification shall also bar the filing of a petition for certification election by any labor organization for a period of 1 year from the date of its issuance (D.O. No. 40-I-15, Rule I, Sec. 3).



Certification as Exclusive Bargaining Agent in the ABU

- ▶ Certification: Employees in the ABU determine:
 - W/N they wish to be represented by a labor organization, and;
 - Which particular labor organization will represent them
- ▶ Done through secret ballot
- ▶ DOLE issues order for the conduct of certification election, and supervises its conduct



Petition for Certification Election

- ▶ Who may file PCE
 - Any LLO, including a national union or federation with a local or chapter
 - Employer, when requested to bargain collectively in the ABU where no CBA exists
- ▶ Where to file: DOLE RO where registration was obtained



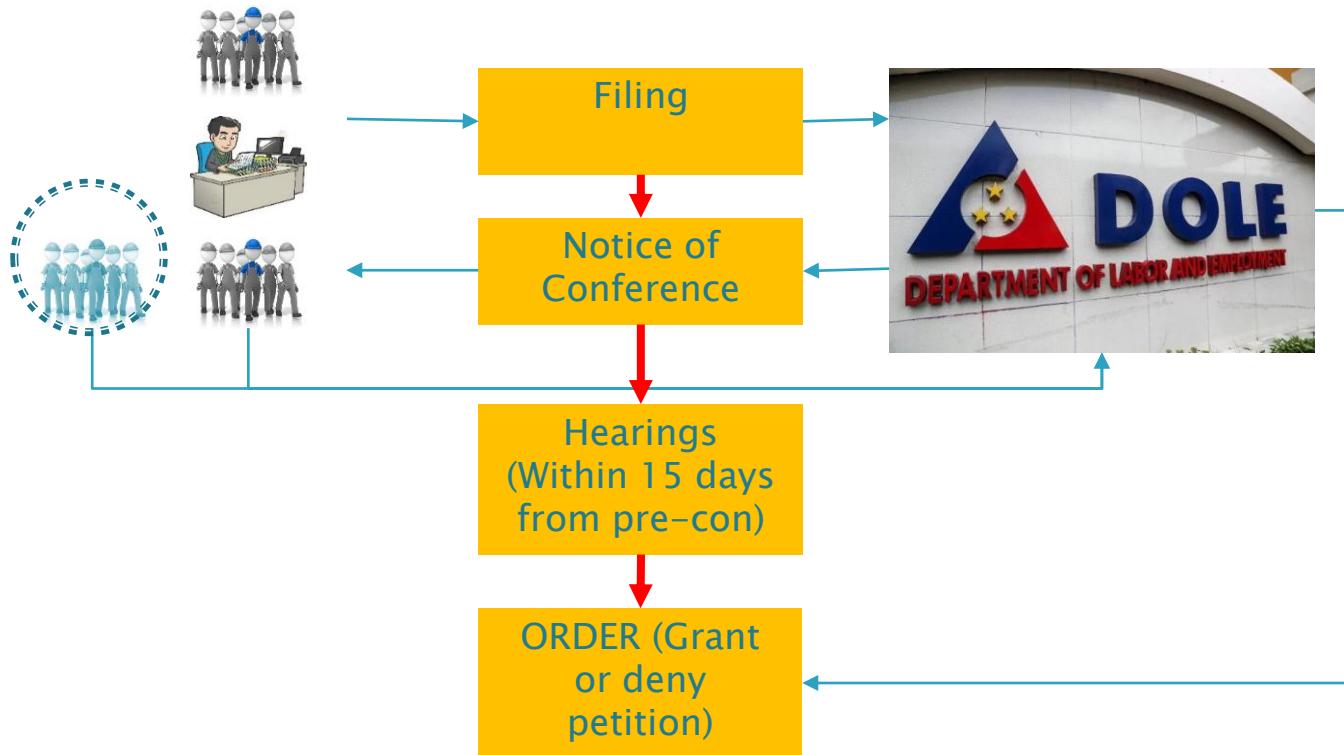
Petition for Certification Election

► Requirements

- a. A statement indicating any of the following:
 - Bargaining unit is unorganized or that there is no registered CBA covering the employees in the bargaining unit;
 - If duly registered CBA exists, that petition is filed within the freedom period;
 - If another union had been previously recognized voluntarily or certified in a valid certification, consent or run-off election, that the petition is filed outside the one-year period from entry of voluntary recognition or conduct of certification or run-off election and no appeal is pending thereon.
- b. In an organized establishment, the signature of at least twenty-five (25%) percent of all employees in the appropriate bargaining unit shall be attached to the petition at the time of its filing (Section 4, Rule VIII, of the Department Order No. 40-03).



Flowchart, Petition for Certification Election (DO 40-03, Rule VIII)



Med-Arbiter's Role, PCE

- ▶ Determine:
 - The ABU to be represented
 - Composition and constituency of the bargaining unit
 - Veracity of majority membership claims
 - LLOs contending for representation
 - If appropriate, possibility of consent election
 - Existence of any bares to certification election
 - Other matters



Denial of PCE

- a. It was filed during a BARRED period:
 1. Contract period
 2. Certification Year
 3. Bargaining Deadlock
 4. Ongoing negotiations (significant, sustained)
- b. The petitioner union is not listed in the DOLE Registry of legitimate labor organization; or
- c. The legal personality of the petitioner-union has been revoked or cancelled with finality.
- d. Less than 25% of employees in ABU support the petitioning LLO (but read the case of California Manufacturing vs. Hon. Usec of Labor, GR No. 97020, June 1992)
- e. Non-appearance of petitioner for two consecutive conferences despite notice



Effect of certain issues to PCE

| Failure to prove affiliation with a federation | Not fatal to PCE if independently registered; if only a charter, PCE is denied; |
|---|---|
| Supposed vitiated consent for filing PCE | The best forum for determining support is through certification election itself |
| Delay in issuance of certificate of registration to union | MAY prevent conduct of cert election. But, if delay is caused by union rivalry, PCE may be given due course |
| Cancellation of registration | Not a bar in union participation in Cert Election, |
| | |
| | |



Collective Bargaining Agreement

- ▶ **Conduct of Certification Election**
- ▶ **Consent Election**—voluntarily agreed upon by the parties with or without the intervention of DOLE.
- ▶ **Note:** Certification election and consent election are separate and distinct from each other (Warren Manufacturing Workers Union v. BLR, G.R. No. 76185, March 30, 1988).



Probationary employees have the right to vote in a certification election

The Code makes no distinction as to employment status as basis for eligibility in supporting the PCE. 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 (National Union of Workers in Hotels, Restaurants and Allied Industries– Manial Pavillion Hotel Chapter v. Secretary of Labor, G.R. No. 181531, July 31, 2009).



Collective Bargaining Agreement

- ▶ **Certification year** refers to the period wherein collective bargaining should begin, which is within 12 months following the determination and certification of employees' exclusive bargaining representative.



Comparison, Certification vs Consent Election

| Certification Election | Consent Election |
|---|--|
| As To Purpose | |
| To determine the sole and exclusive bargaining agent of all the employees in an appropriate bargaining unit for the purpose of collective bargaining | To determine the issue of majority representation of all the workers in the appropriate collective bargaining unit mainly for the purpose of determining the administrator of the CBA when the contracting union suffered massive disaffiliation but not for the purpose of determining the bargaining agent for purposes of collective bargaining |
| As To Participation of Med-Arbiter | |
| Requires a petition for certification election filed by a union or employer. A Med-Arbiter grants the petition and an election officer is designated by the Regional Director to supervise the election. Note: Med-Arbiter may determine if there is employer-employee relationship and if the voters are eligible. | Held by agreement of the unions with or without the participation of the Med-Arbiter |



Collective Bargaining Agreement

- ▶ **Voluntary Recognition** is the process whereby the *employer* recognizes a labor organization as the exclusive bargaining representative of the employees in the appropriate bargaining unit after a showing that the labor organization is supported by at least a majority of the employees in the bargaining unit.
- ▶ **SEBA certification** is the process whereby the DOLE recognizes a labor organization as the exclusive bargaining representative of the employees in the appropriate bargaining unit.



Cases

1. Allied Free Worker's Union v. Compania Maritima, G.R. Nos. L-122951-52, January 31, 1967;
2. Kiok Loy v. NLRC, G.R. No. 54334, January 22, 1986.
3. National Union of Workers in Hotel, Restaurant and Allied Industries (NUWRAIN-APL-IUF), PH Plaza Chapter v. Philippine Plaza Holdings, Inc., G.R. No. 177524, July 23, 2014.
4. Trade Unions of the Philippines v. Lagunesma, G.R. No. 95013, September 21, 1994.
5. Davao Integrated Port Stevedoring Services v. Abarquez, G.R. No. 102132, March 19, 1993
6. General Milling v. CA, G.R. No. 146728, February 11, 2004 (Wiley Doctrine)
7. Benguet Consolidated, Inc. V. BCI Employees and Workers Union-PAFLU, G.R. No. L-24711, April 30, 1968 (Substitutionary Doctrine)
8. St. Luke's Medical Center, Inc, v. Hon. Torres, G.R. No. 99395, June 29, 1993 (Retroactivity of CBA provisions)
9. Rivera v. Hon. Espiritu, G.R. No. 135547, January 23, 2002 (Suspension of CBA)
10. Ando v. Campo, G.R. No. 184007, February 16, 2011 (Issuance of injunctions)
11. Republic Flour Mill Workers Assoc. V. Reyes, G.R. No. L-21378, November 28, 1966.
12. PAFLU v. Cloribel, G.R. No. L-25878, March 28, 1969 (rights of 3rd parties to secure injunctions from regular courts in strikes).
13. Philtranco Service Enterprises v. BLR, G.R. No. 85343, June 28, 1989 (one company, one union).
14. San Miguel Corp. Employees Union PTGWO v. Confesor, G.R. No. 111262, Sept. 19, 1996 (Substantial mutual interest rule)
15. Philippine Land Air—Sea Labor Union v. CIR, G.R. No. L-14656, November 29, 1960



Labor Relations – Grievance Machinery and Voluntary Arbitration

University of the Cordilleras College of Law



Grievance Machinery

- »» □ Article 273
- DO 40-03





Grievance, defined.

Generally:

Any question by either the employer or the union regarding the interpretation or application of the collective bargaining agreement or company personnel policies or any claim by either party that the other party is in violation of any provision of the CBA or company personnel policies".



Grievance, defined.

In Context:

- ▶ A dispute or controversy between the employer and the collective bargaining agent
- ▶ arising from the interpretation or implementation of their CBA, or those arising from the interpretation or enforcement of company personnel policies, or both;

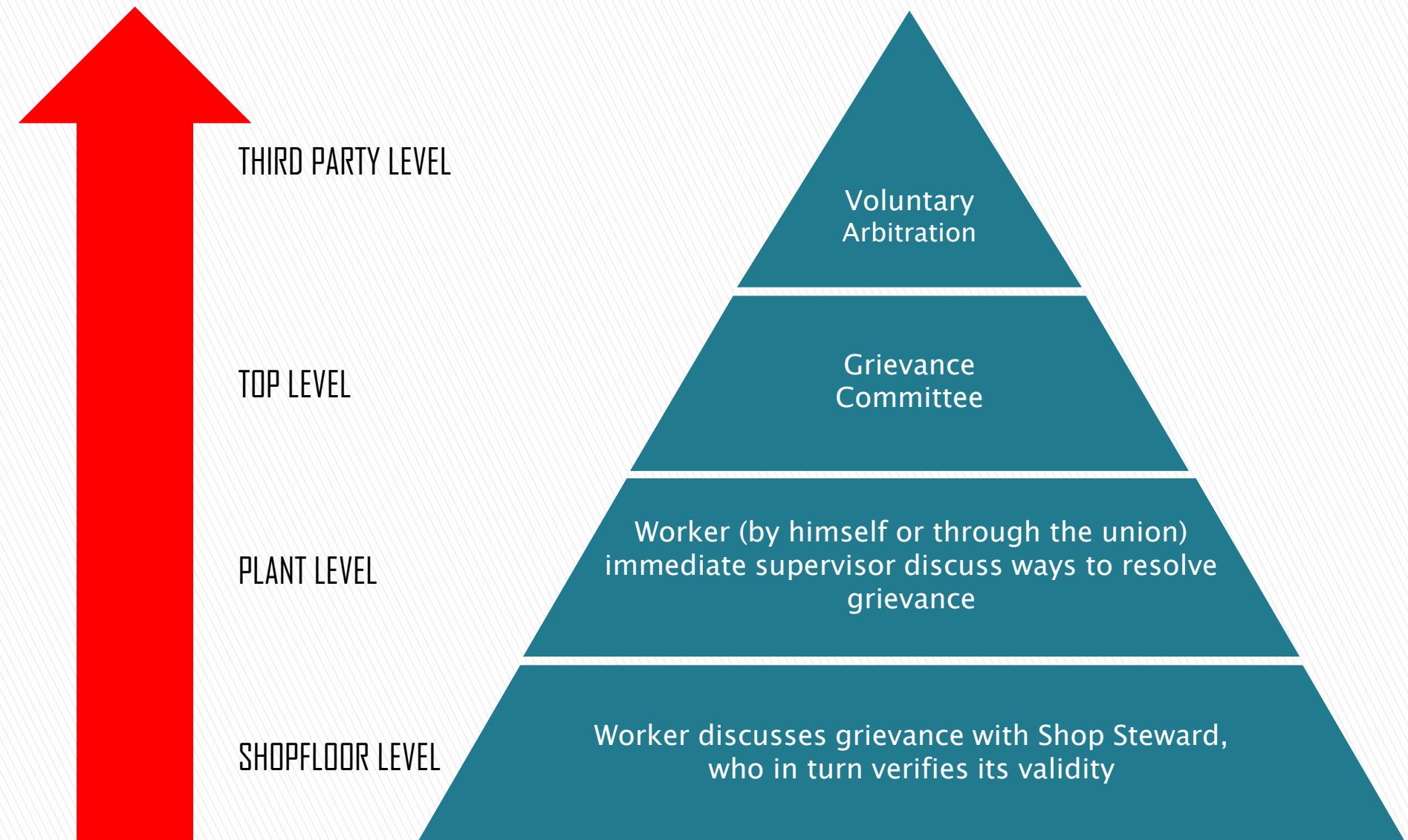


Grievance Machinery

- ▶ The mechanism for the adjustment and resolution of grievances arising from the interpretation or implementation of a CBA and those arising from the interpretation or enforcement of company personnel policies.
- ▶ Purpose: for the adjustment and resolution of grievances.
- ▶ Grievance Procedure – DO 40, s. 2003



Grievance Procedure



MANDATORY Requirement for Grievance Machinery in CBA

Both parties are required to ensure that grievance machinery is included in the Collective Bargaining Agreement, and include

- Identification of the Voluntary Arbitrator, or
- Procedure for selecting the Voluntary Arbitrator (VA) or Panel of VAs.



NLRC and DOLE action on grievances

► Article 274:

NLRC, and DOLE directed to IMMEDIATELY dispose of and refer the same to the grievance machinery or voluntary arbitration provided in the collective bargaining agreement. See also Rule XI of the Implementing Rules



What CBA provisions may be subject to Grievance Machinery?

- ▶ Economic provisions (those which have direct and measurable monetary cost consequences)
 - wage rates
 - paid vacations
 - Pensions
 - health and welfare plans
 - penalty premiums and
 - other fringe benefits.
- ▶ Non-Economic (those whose monetary cost can not be directly computed)
 - no-strike-no-lockout
 - union security
 - management security
 - check-off clauses
 - grievance procedures



Personnel Policies

- ▶ Personnel policies are guiding principles stated in broad, long-range terms that express the philosophy or beliefs of an organization's top authority regarding personnel matter affecting the efficiency and well being of employees.
 - administration of wages
 - Benefits
 - Promotions
 - transfers and other personnel movements



An Effective Grievance Procedure is...

- ▶ Adaptable to all types of grievances;
- ▶ Designed to facilitate early settlement of grievances;
- ▶ Encourages settlement of grievances at the lower steps with clear authority of supervisors/managers to decide;



Objectives and Benefits of Grievance Machinery

1. Employees' voice;
2. De-escalate minor disagreements;
3. Provide systematic and non-contentious channel to resolve disputes;
 - a. Fact-finding
 - b. Identification of root causes
4. Multi-level setup allows for appeals;
5. Open lines of communication between the parties during CBA lifetime;
6. Method of interpreting the CBA;
7. Protect the integrity of the contractual agreement;



Voluntary Arbitration



- Arbitration in General
- Articles 274–277
- NCMB Revised Guidelines on Voluntary Arbitration (2021)



Arbitration, defined.



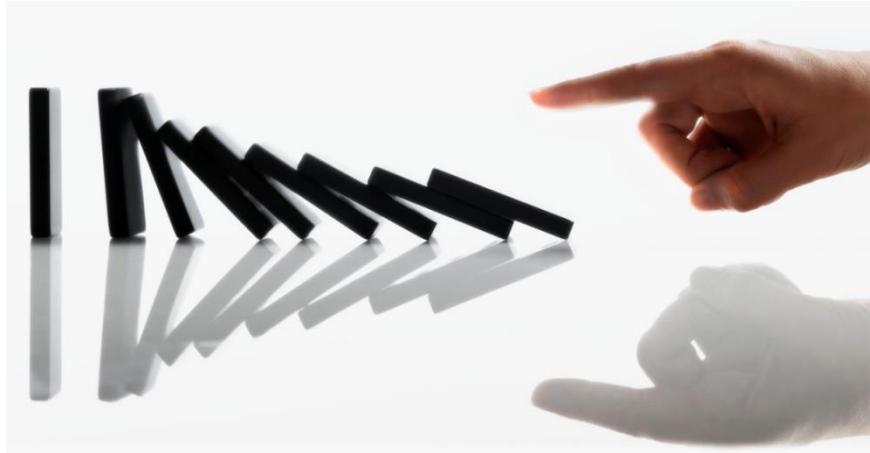
- ▶ **A voluntary dispute resolution process**
 - One or more arbitrators (neutral third party)
 - Resolves a dispute by rendering an award (final and binding decision)
 - Rendered after each side has opportunity to be heard
 - ADR Act of 2004

Arbitration, defined.



- ▶ Arbitrators are selected by parties based on criteria suitable for contracts
- ▶ Scope of arbitration decided by parties and incorporated in the contract (arbitration clause)

Rationale for Arbitration



It is much better to resolve disputes speedily, efficiently, cost-effectively, and in an atmosphere that is less adversarial than court litigation

- ▶ The players are a closed group
- ▶ Disputes cause delays
- ▶ Delays cost money
- ▶ Litigation strains relationships

Rationale for Arbitration

- ▶ Arbitration allows greater flexibility
 - Rules of court are not controlling
 - Time may be abbreviated
 - Parties may stipulate where arbitration to be conducted.



Arbitration Now the Preferred Choice in Resolving Disputes

- ▶ Republic Act 9285, the Alternative Dispute Resolution Act of 2004
- ▶ The Philippines, as well as other countries worldwide are looking at arbitration as the most effective way of resolving disputes
- ▶ Commercial arbitration is being resorted to more and more each year, in line with transnational commerce and trade and rapid globalization.
- ▶ Disputes arising from transnational construction contracts are best addressed by arbitration, since non-Filipino parties may not be too trusting of the country's judicial system.

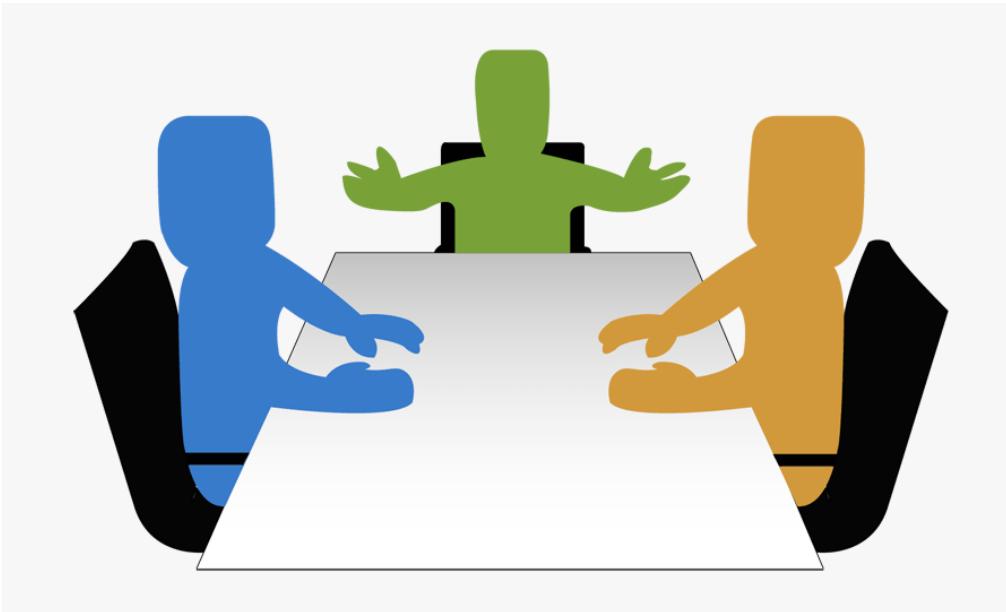


Comparative Advantages of Arbitration vs. Litigation

| Speed | Cost | Specialized Competence | Neutrality and Party Autonomy |
|--|--|--|--|
| <ul style="list-style-type: none">Court cases have been known to be decided after six, ten, even 20 yearsDockets of courts are clogged from the lowest to the highest courtsCase resolution period is covered by 80-day Rule (2021 Guidelines) | <ul style="list-style-type: none">Less costlyEarlier resolution avoids work stoppage due to lockout or strike | <ul style="list-style-type: none">Arbitrators are selected by the Employer and the SEBAArbitrators are not all lawyers; some are professionals with specialized knowledge in labor-management relations | <ul style="list-style-type: none">Place of arbitration – parties may agree to have the arbitration conducted in any city in the PhilippinesProcedures – Not bound by the Rules of Court, neither is the VA compelled to cite Res Judicata |



Voluntary Arbitration

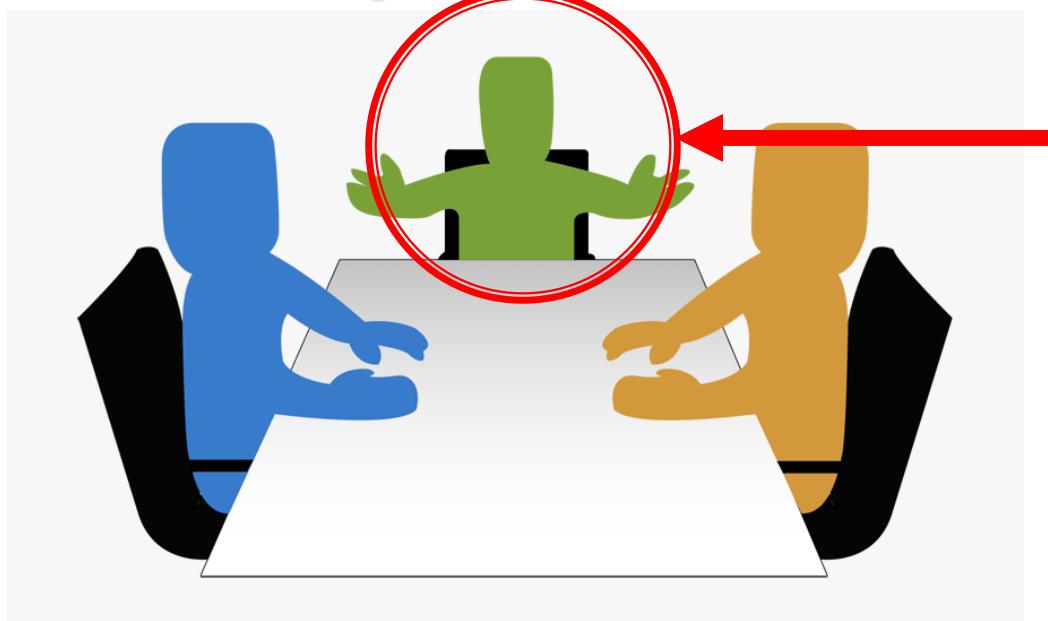


Definition (2021 NCMB Guidelines):

The mode of settling labor-management disputes by which the parties select a competent, trained, and impartial third person who shall decide on the merits of the case and whose decision is final and executory.



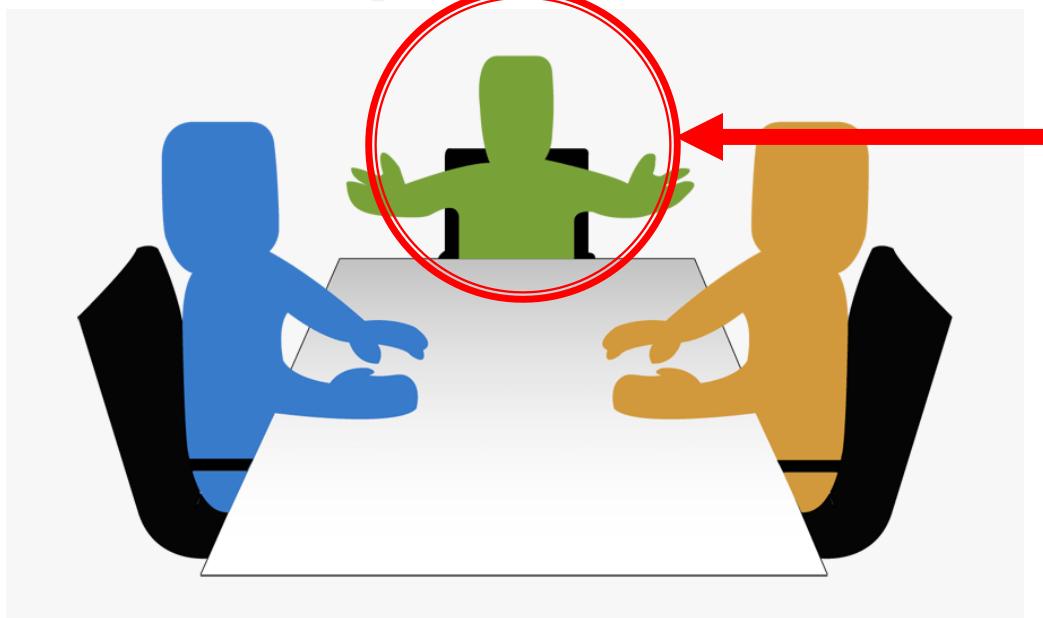
The Voluntary Arbitrator



Definition (2021 NCMB Guidelines):

1. Any person who has been accredited by the Board as such
2. Any person named or designated in the CBA by the parties as their Voluntary Arbitrator
3. One chosen by the parties, pursuant to a selection procedure agreed upon in the CBA
4. One selected with the supervision of the Board where neither of the parties refuse to submit to voluntary arbitration.

The Voluntary Arbitrator



VAs are not employees of government

1. Paid for arbitration services (Relevant rules of schedule of fees);
2. Venue can be stipulated
3. Rules can be negotiated

Jurisdiction of Voluntary Arbitrators:

1. All unresolved grievances arising from the interpretation or implementation of the collective bargaining agreement;
2. All unresolved grievances arising from the implementation or enforcement of company personnel policies;
3. All wage distortion issues arising from the application of any wage orders in organized establishments; and
4. All unresolved grievances arising from the interpretation and implementation of the productivity incentive programs under R.A. No.6971.

Original and Exclusive

UPON AGREEMENT OF THE PARTIES, shall also hear and decide all other labor disputes including unfair labor practice and bargaining deadlocks.

Concurrent

Voluntary Arbitration Procedure



Contesting the VA's Decision

Motion for Reconsideration

- Filed with Voluntary Arbitrator
- Within 10 days from counsel or authorized rep's receipt of decision
- One MR only.

Appeal (Rule 43,
Rules of Court)

- Filed with Court of Appeals
- Voluntary Arbitrator is considered a quasi-judicial body, hence appeal is a viable remedy (Not Certiorari under Rule 65)
- Within 15 days from receipt of Decision on the Motion for Reconsideration (*Guagua National College vs. CA, August 18, 2018*)

Appeal on Certiorari
(Rule 45, Rules of Court)

- Filed with Supreme Court
- Within 15 days from receipt of the Decision from the CA

The VA's decision becomes final and executory if no MR is filed within 10 days from the party's receipt of the decision



Strikes and Lockouts



Concerted Activity

- ▶ **Concerted Activity:** is one undertaken by two or more employees by two or more employees or by one on behalf of the others in pursuit of a common goal
 - With or without the authority of other employees
 - Not solely by or on behalf of the employee himself.
- ▶ **Forms:**
 - ▶ 1. Strike
 - ▶ 2. Lockout
 - ▶ 3. Picketing



Strikes and Lockouts

- ▶ **Strike** is any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute. Strike encompasses not only work stoppages but also the following:
 1. Slowdowns;
 2. Mass leaves;
 3. Sitdowns;
 4. Attempts to damage, destroy, or sabotage plant equipment and facilities and similar activities; or
 5. Overtime boycott.



Strikes and Lockouts

Lockout means the temporary refusal of an employer to furnish work as a result of an industrial or labor dispute. It consists of

- ▶ Shutdowns
- ▶ Mass retrenchment and
- ▶ Dismissals initiated by the employer



Strikes and Lockouts

- ▶ **A Lockout is deemed lawful when:**
 - ▶ 1. In anticipation of a threatened strike;
 - ▶ 2. In response to an unprotected strike or walkout; or
 - ▶ 3. In response to a whipsaw strike (2 AZUCENA, *supra* at 556).
- ▶ **A Lockout is deemed unlawful:**
 - ▶ 1. It is to discourage and dissipate membership in a labor organization or otherwise kill the union;
 - ▶ 2. It is to aid the particular union by preventing further organizational work of its rival, or to coerce the employees to join the favored union; or when
 - ▶ 3. It is to avoid bargaining (*Ibid.*).



Strikes and Lockouts

- ▶ **Nature of the Right to Strike and Lockout**
- ▶ The right to strike is a constitutional and legal right of the workers as the employers have the inherent and statutory right to lockout, all within the context of labor relations and collective bargaining.
- ▶ It is a means of last resort and presupposes that the duty to bargain in good faith has been fulfilled and other voluntary modes of dispute settlement have been tried and exhausted (Guidelines Governing Labor Relations, October 19, 1987).



Role and Purpose

- ▶ Strikes are the most preeminent economic weapon of workers to force management to agree to an equitable sharing of the joint product of labor and capital;
- ▶ Serves as protection against management exploitation
- ▶ Exert some disquieting effects on the Er-ee relationship, as well as the general peace and progress of society
- ▶ Because of this, strikes are heavily regulated, and the law imposes the supreme penalty of dismissal on officers who irresponsibly participate in illegal strikes
- ▶ It must only be used on account of a labor dispute



Labor Dispute

- ▶ **Labor Dispute** includes any controversy or matter concerning terms or 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 (Gold City Integrated Port Service, Inc. V. NLRC, G.R. Nos. 103560, 103599, July 6, 1995).



Principles on Strikes and Lockouts

1. Government employees may form labor unions but are not allowed to strike;
2. Only legitimate labor organizations are given the right to strike;
3. Unionized workers may hold a protest action but not a strike; and
4. Not all concerted activities are strikes; they may only be protest actions and they do not necessarily cause work stoppage by the protesters. A strike, in contrast, is always a group action accompanied by work stoppage.



Strikes may be prohibited, but self-organization rights may not

- ▶ A law may be passed prohibiting selected sectors of labor from resorting to strikes. However, a law cannot be passed prohibiting selected sectors of labor from organizing unions.



Strike and Lockout

- ▶ **Boycott** is an attempt by arousing a fear of loss, to coerce others, against their will to withhold from one denominated "unfriendly to labor" their beneficial business intercourse.
- ▶ **Kinds of Boycott**
- ▶ 1. **Primary Boycott**: is applied directly and alone to the offending person by withdrawing from him all business relations on the part of the organization that initiated the boycott.
- ▶ 2. **Secondary Boycott** is a combination not merely to refrain from dealing with a person, or to advise or by peaceable means persuade his customers to refrain, but to exercise coercive pressure upon such customers, actual or prospective, in order to cause them to withhold or withdraw patronage from him through fear of loss or damage to themselves should they deal with him.



Strikes and Lockout

- ▶ **Picketing** is an act of marching to and fro around the employer's premises, usually accompanied by the display of placards and other signs making known the facts involved in a labor dispute. This is an exercise of one's freedom and speech.



Strike and Lockout

- ▶ Article 279 (e) of the Labor Code prohibits any person engaged in picketing from obstructing the free ingress to and egress from the employer's premises (Jackbilt Industries, Inc. V. Jackbilt Employees Workers Union–NAFLU–KMU, G.R. Nos. 171618–19, March 20, 2009).
- ▶ The picketing of a private home in a residential district is generally held improper, even when the picketers are domestic servants. This is on the grounds that "a home is not an industrial or a business enterprise, that is not acquired or maintained for pecuniary gain or profit, but rather, that it is an institution used and maintained as a place of abode, and that an enterprise not conducted as means of livelihood, or for profit, does not come within the ordinary meaning of such terms as 'business', 'trade', or 'industry' (State v. Cooper, 205 Minn. 333, 285 N.W. 903, 122 A.L.R. 77).



Kinds of Strikes

- ▶ **Economic** – demand for higher wages, overtime pay, holiday pay, other economic benefits.
- ▶ **ULP strike** – protest against employer's acts of ULP as enumerated in Article 259 of the Labor Code.
- ▶ **Slowdown** – 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.
- ▶ **Quickie** – brief and unannounced stoppage
- ▶ **Wildcat** – staged without the approval of majority of the SEBA's members
- ▶ **Sympathy** – one used to express support for another company's workers



Requisites for a valid strike

1. Valid purpose
 - a. Bargaining deadlock
 - b. ULP
2. Notice of strike (filed 30 days prior to intended date, or 15 days in case of ULP)
3. Cooling off period (runs from the time the notice is filed. However, period is dispensed with in cases of union-busting);
4. Notice of Strike Vote (to NCMB, at least 24 hours prior)
5. Strike vote (approved by majority of the total union membership)
6. Notice of results of voting (submitted at least seven days prior to intended strike)
7. Waiting period (seven days)
8. Declaration of Strike



Valid Grounds

- ▶ Collective Bargaining Deadlock
- ▶ Unfair Labor Practice (including union-busting)
- ▶ Non-strikeable issues may be discussed in preventive mediation only, strike on the following is illegal:
 - Salary Distortion under Wage Rationalization Act
 - Physical Rearranging of office
 - Demands to change sales evaluation policy
 - Inter and intra-union dispute



Notice of Strike

1. Filed with the NCMB (employer furnished copy)
2. Only exclusive bargaining representative files in case of bargaining deadlock; but any union affected by ULP may file;
3. Notice should state:
 1. Unresolved issues in bargaining negotiations, or statement of acts complained of constituting ULP;
 2. Proposals of union and counterproposal of employer
 3. Proof of request for conference to settle differences



Cooling Off Period

- ▶ NCMB uses this time for conciliation or mediation;
- ▶ Upon agreement of parties, period may treat notice as a preventive mediation case.
- ▶ Parties should not commit any act which may disrupt or impede early settlement of the case;
- ▶ Parties encouraged to submit to voluntary arbitration



Notice of Strike Vote, and Actual Voting

- ▶ NCMB must be informed at least 24 hours before intended meeting or referendum
 - PURPOSE: NCMB to determine if supervision of strike vote is needed or requested
- ▶ Secret balloting done by union members
 - PURPOSE: Ensure that strike has the support of the majority
 - Participating union members must be eligible to vote. Dismissed employees who did not question their dismissal are not allowed to participate



Strike Vote Report

- ▶ NCMB must receive report at least seven days before intended meeting or referendum
 - PURPOSE: To give the DOLE opportunity to verify that support of the majority of union members was obtained (simple majority)
- ▶ Secret balloting done by union members
 - PURPOSE: Ensure that strike has the support of the majority



Declaration of Strike

- ▶ Happens only after the lapse of the cooling-off period and the waiting period
- ▶ Mediation and conciliation takes place even with the strike ongoing
 - Conciliator-mediator can only suggest solutions;



Prohibited and Illegal Acts

- ▶ Violence, coercion, intimidation (both sides)
 - Violence must be pervasive, widespread and consistently and deliberately resorted to as a policy to be grounds for dismissal of participating officers or members
- ▶ Obstruct free ingress or egress of employer's premises for legal purposes
- ▶ Obstruct public thoroughfares
- ▶ Commission of crimes and unlawful acts in carrying out strike
- ▶ Violation of injunction, prohibition order issued by SOLE



Assumption of Jurisdiction

- ▶ Either the SOLE or President may assume jurisdiction over labor disputes subject of a strike or lockout, but assumption happens in NATIONAL INTEREST cases;
- ▶ Assumption of jurisdiction is an extraordinary and preemptive power;



Assumption of Jurisdiction

- ▶ **Effect:** Strike is enjoined and the striking workers after due notice are ordered to return to work and the management to accept them while the Secretary of Labor or the NLRC resolves the dispute.
- ▶ **Consequence of defiance of Assumption Order or RTWO**
 - Strike becomes a **PROHIBITED** activity – illegal.
 - Union officers or members who *knowingly* defy order deemed dismissed from employment.



Assumption of Jurisdiction

- ▶ National interest cases – labor disputes causing or likely to cause a strike or lockout in an INDUSTRY INDISPENSABLE TO THE NATIONAL INTEREST
- ▶ See 40-H-13 for list of industries vested with national interest
- ▶ Assumption of jurisdiction is an exercise of the police power
 - Promote the common good
 - Restore industrial peace



Improved Offer/Reduced Offer Ballotting

- ▶ A tool intended to put an end to the work stoppage
- ▶ Done by secret ballot (union members if under strike, board members if under lockout)
- ▶ Simple majority determines whether the offer is accepted
 - Reduced demand (union seeks to negotiate an end to the lockout)
 - Improved offer (Employer seeks to negotiate end to the strike)
- ▶ Allows both sides to save face



Cases

1. Union of Filipro Employees, et al., vs Nestle Philippines, Inc., et al, G.R. 88710-13, December 19, 1990
2. GOLD CITY INTEGRATED PORT SERVICE, INC., vs. NLRC, G.R. No. 103560, July 6, 1995
3. Grand Boulevard Hotel vs. Genuine Labor Organization of Workers in Hotel, Restaurant and Allied Industries (GLOWHRAIN), G.R. No. 152664, July 18, 2003 & Grand Boulevard Hotel vs. Dacanay, G.R. No. 153665, July 18, 2003
4. CAPITOL MEDICAL CENTER, INC. vs. NLRC, G.R. No. 147080, April 26, 2005
5. University of San Agustin vs. CA, G.R. 169632, March 26, 2006
6. NUWHRAIN -APL-IUF Dusit Hotel Nikko Chapter vs. CA, G.R. No. 163942, November 11, 2008
7. PHIMCO INDUSTRIES, INC. vs. PHIMCO INDUSTRIES LABOR ASSOCIATION (PILA), VAZQUEZ, et.al., G.R. No. 170830, August 11, 2010
8. BIGG'S INC. vs JAY BONCACAS, et.al., G.R. No. 200487, March 06, 2019



Visitorial Powers of the SOLE

- ▶ Inquire into an LLO's financial activities
 - Requisite for exercise of power: Complaint, with written support of at least 20% of total membership
- ▶ Scope:
 - Examination of books of accounts, other records to verify compliance
 - Prosecute any violations of law
- ▶ When power cannot be exercised
 - Freedom period
 - 30 days preceding election date of union officials



Government Employees

- ▶ Terms and conditions of employment governed by Civil Service Law, rules and regulations;
- ▶ Salaries standardized by Congress



Special Provision

- A. Editorial Power – Article 289
- B. Tripartism – Article 290
- C. Government Employees – Article 291
- D. Miscellaneous Provisions – Article 292 (particularly letters a, b, c, d, g, and h)
- E. Procedural Due Process; *Perez v. PT&T*, G.R. No. 152048, April 7, 2009; *Surigao del Norte Electric Cooperative, Inc. v. Gonzaga*, G.R. No. 187722, June 10, 2013)
- F. Effect of Failure to Comply with Procedural Due Process (*Agabon v. NLRC*, G.R. No. 158693, Nov. 17, 2004)
- G. Factors in Determining Nominal Damages in Termination Disputes (*Industrial Timber Corporation v. Ababon et al.*, G.R. No. 164518 and *Ababon v. C.A.*, G.R. No. 164965, March 30, 2006; also *Jaka Foods Processing Corp. v. Pacot*, G.R. No. 151378, March 28, 2005)



Termination of Employment



Management Prerogative

***The state recognizes
and respects
management rights,
hence do not interfere in
legitimate business
decisions.***

Limitations:

1. CBA
2. Employment Contract
3. Employer Policy or Practice
4. General Principles of Fair Play and Justice



Management Prerogative

- 1. PREROGATIVE TO PRESCRIBE WORKING METHODS, TIME, PLACE, MANNER AND OTHER ASPECTS OF WORK**
- 2. PREROGATIVE TO REORGANIZE.**
 - a. Allowed as long as not contrary to law, morals or public policy



Management Prerogative

3. PREROGATIVE TO PROMOTE/DEMOTE

- a. Promotion, defined: advancement from one position to another involving increase in duties and responsibilities as well as increase in compensation and benefits; Demotion, defined: reduction in position, rank or salary.
- b. Distinction of Transfer to Promotion – lateral movement to ascent
- c. When demoted, affected employee can use the due process principle in challenging his demotion.



Management Prerogative

4. PREROGATIVE TO DISCIPLINE AND DISMISS

- a. Fair and reasonable: Dismissal is a measure of self-protection – binding unless grossly oppressive or contrary to law
- b. Discipline, dismissal subject to police power
- c. Penalties commensurate to the offense involved and degree of infraction. (Apply proportionality rule); BUT a heavier penalty may be imposed
 - a. preserve the organization
 - b. protect against destructive potential of a mal-intended worker.



Management Prerogative

5. PREROGATIVE TO TRANSFER - Movement from one position or another of equivalent rank/level or salary without a break in the service, or from one office to another within the same establishment.

- a. No demotion or diminution of salaries, benefits and other privileges.
- b. Good faith (not as punishment or discrimination). - Test: Is it unreasonable, inconvenient or prejudicial?



Management Prerogative

- ▶ Questionable circumstances (ex., transferee is union officer, during height of concerted activities of union.)
- ▶ Transfer by way of “promotion” is questionable - employee cannot be compelled to accept a promotion
- ▶ Employee goes against a policy made known to him at the time of his employment,
- ▶ Causes raised for refusal are flimsy at best. (Parental obligations, additional expenses, anguish)

Justified Refusal

Unacceptable Refusal

Management Prerogative

- a. Valid transfers: a) SOP of management; b) pursuant to company policy c) pre-determined office policy and practice d) rotation of bank employees; e) Transfer to avoid conflict of interest f) Ordered by government g) Abolition of position
- b. Transfer may constitute constructive dismissal when it amounts to involuntary resignation (continued employment is rendered impossible, unreasonable or unlikely)
- c. Transfer by way of demotion – consider the totality of the following circumstances: economic significance of the work, duties and responsibilities, rank and salary of the employee



Security of Tenure (Article 294)

- ▶ In cases of REGULAR employment, no dismissal except for JUST or AUTHORIZED causes.
- ▶ Employee unjustly dismissed entitled to
 - Reinstatement without loss of seniority
 - Full backwages, including allowances
 - Other benefits



Computed from time
compensation was withheld to
to time of actual reinstatement



Due Process is Constitutionally Guaranteed

Distinction between constitutional due process and statutory due process
(Agabon vs. NLRC, 2004)

- ▶ “To be sure, the Due Process Clause in Article III, Section 1 of the Constitution embodies a system of rights based on moral principles so deeply imbedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society as conceived by our entire history. Due process is that which comports with the deepest notions of what is fair and right and just. It is a constitutional restraint on the legislative as well as on the executive and judicial powers of the government provided by the Bill of Rights.”



Due Process is Constitutionally Guaranteed

Distinction between constitutional due process and statutory due process
(Agabon vs. NLRC, 2004)

- ▶ Due process under the Labor Code, like Constitutional due process, has two aspects: substantive, i.e., the valid and authorized causes of employment termination under the Labor Code; and procedural, i.e., the manner of dismissal. Procedural due process requirements for dismissal are found in the Implementing Rules of P.D. 442, as amended, otherwise known as the Labor Code of the Philippines in Book VI, Rule I, Sec. 2, as amended by Department Order Nos. 9 and 10. Breaches of these due process requirements violate the Labor Code. Therefore statutory due process should be differentiated from failure to comply with constitutional due process.



Due Process is Constitutionally Guaranteed

Distinction between constitutional due process and statutory due process
(Agabon vs. NLRC, 2004)

- ▶ Constitutional due process protects the individual from the government and assures him of his rights in criminal, civil or administrative proceedings; ***while statutory due process found in the Labor Code and Implementing Rules protects employees from being unjustly terminated without just cause after notice and hearing.***



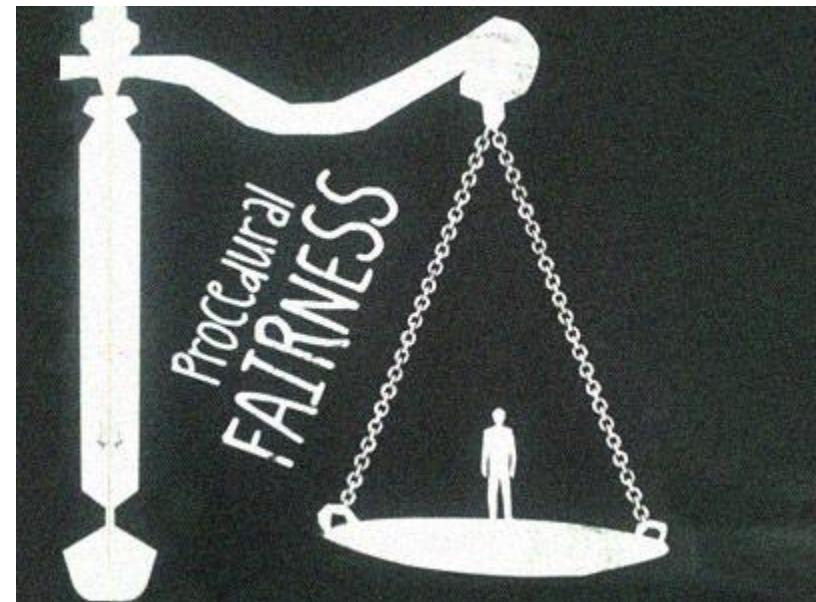
Due Process is Constitutionally Guaranteed

Other rights applicable to labor cases:

1. Right against self-incrimination
2. Right to counsel
3. Right to equal protection of laws

TWO-FOLD DUE PROCESS REQUIREMENT:

1. Substantive Aspect
2. Procedural Aspect



Importance of Notice in Satisfying Due Process

- ▶ Notices and hearing made before commission of offense not valid
- ▶ Service of notice is not a mere technicality but a requirement of due process
- ▶ No prescribed form
- ▶ Notice must be in writing
- ▶ Employee's written explanation does not cure lack of first notice
- ▶ Summary dismissal even if agreed upon by employee, not valid



First Notice: Whats and Hows

- ▶ Must include a statement that investigation will be conducted on the charges specified therein (exclusive);
- ▶ Statement that the dismissal of the employee is being sought (punitive);
- ▶ Specific as to the section of the company rule violated and also the penalty of dismissal (particular);
- ▶ Defective Notices:
 1. Treating numerous separate violations in the past;
 2. Charges couched in general terms;
 3. Affidavit in lieu of a first notice;



Hearing and Dismissal

1. Employee must be dismissed based on the same grounds mentioned in the first notice
2. Changing of ground for terminating employee indicates lack of basis
3. Hearings not required for:
 - a. *Admission of guilt*
 - b. *Authorized causes under Article 298*
 - c. *Disease*
 - d. *Resignation*
 - e. *After 6 months of bona fide suspension of operations*
 - f. *Expiration of fixed period*
 - g. *Casual employment*
 - h. *Completion of project for project employees*
 - i. *Lapse of season in seasonal employment*
 - j. *Probationary period*
 - k. *Expiration of tenure coterminous with lease*
 - l. *Contractual employment*
 - m. *Abandonment*
 - n. *Closure or stoppage of work by government*



Just Causes for Termination (Art. 297)

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Just Causes of Termination

- ▶ Lawful or valid grounds for termination of employment which arise from causes directly attributable to the fault or negligence of the erring employee. Just causes are usually **serious or grave** in nature and attended by **willful or wrongful intent** or they **reflected adversely on the moral character** of the employees.
- ▶ As opposed to authorized causes under Article 298 wherein the termination of employment is dictated by necessity of the business, the dismissal under just causes is imposed by the employer to the erring employee as a **punishment for the latter's acts or omission**.



Just Cause: Serious Misconduct

- ▶ An improper conduct, willful in character and of such grave nature that transgressed some established and definite rule of action in relation to the employee's work.
- ▶ Misconduct - Improper or wrong conduct. It is the 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. (Austria vs. NLRC, G.R. No. 124382, August 16, 1999.)



Requisites, Serious Misconduct

1. the misconduct must be serious;
2. 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
3. it must have been performed with wrongful intent

Ricardo G. Sy and Henry B. Alix v. Neat, Inc., Banana Peel and Paul Vincent Ng, G.R. No. 213748, November 27, 2017



Mere Error in Judgment is not Misconduct

▶ Misconduct is...

- a TRANSGRESSION of some established and definite rule of action;
- a forbidden ACT
- a DERELICTION of duty, WILLFUL in character;
- implies WRONGFUL INTENT and not mere error in judgment.

Sterling Paper Products Enterprises, Inc. v. KMM-Katipunan and Raymond Z. Esponga, G.R. No. 221493, August 2, 2017



Mere Error in Judgment is not Misconduct

- ▶ Mere error in judgment cannot qualify as misconduct (much less a serious one) because of lack of wrongful intent.
- ▶ It is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been performed with wrongful intent.
 - ***NLRC vs. Salgarino, G.R. No. 164376, July 31, 2006,***



Misconduct Must be Serious

- ▶ The misconduct to be serious must be of such grave and aggravated character and not merely trivial and unimportant.
- ▶ Misconduct, however serious, must, nevertheless, be **in connection with the employee's work** to constitute just cause for his separation. (See Technol Eight Philippines Corporation v. National Labor Relations Commission, 632 Phil. 261, 271 (2010))



Cases

- ▶ The employee's (an accounting manager) act of willfully understating the company's profits or financial position, committed as it was in order to "save" costs, which to her warped mind, was supposed to benefit her employer, partakes serious misconduct. It was not merely a violation of company policy, but of the law itself, and put the employer at risk of being made legally liable. The dismissal in this case is warranted. An employer cannot be compelled to retain in its employ someone whose services is inimical to its interests. (Llamas vs. Ocean Gateway, G.R. No. 179293, August 14, 2009.)
- ▶ Two traffic operators who placed free long distance calls was dismissed by PLDT. The dismissal was upheld as valid. The dishonesty committed by the erring employee qualifies as serious misconduct especially that it goes to the very heart and essence of the company. Long distance call is the lifeblood of PLDT. (PLDT vs. Montemayor, G.R. No. 88626, October 12, 1990.)
- ▶ A ticket freight clerk was dismissed for dishonesty for charging to his VISA credit card some plane tickets in spite of the cash payment made by passengers. The dismissal was for a just cause. (PAL vs. NLRC, G.R. No. 117038. September 25, 1997.)
- ▶ The case involved toll guards assigned at the North Luzon Tollway, Bulacan interchange, who were caught accepting bribe in the form of cash and a dog from a motorist who was suspected of illegally transporting dogs. The dismissal was upheld as for just cause. Bribery constitutes serious misconduct. (Phil. National Construction vs. NLRC, G.R. No. 128345, May 18, 1999.)



Willful Disobedience

- ▶ Employees are bound to follow reasonable and lawful orders of the employer which are in connection with their work. Failure to do so may be a ground for dismissal or other disciplinary action.



Requisites of Willful Disobedience

1. the employee's assailed conduct must have been **willful or intentional**, the willfulness being characterized by a **wrongful and perverse attitude**;
2. the **order** violated must have been
 - a. reasonable,
 - b. lawful,
 - c. made known to the employee and
 - d. must pertain to the duties which he had been engaged to discharge.

Gold City Integrated Port Services, Inc. v.
NLRC, G.R. No. 86000, 21 September 1990

Mañebo v. NLRC, G.R. No. 107721, 10
January 1994

Some Rules on Invoking Willful Disobedience

- ▶ Willful Disobedience: Strict adherence to policy is required to invoke the cause
 - No willful disobedience if breach of rules was tolerated by management
- ▶ Damage to employer is not important in dismissal based on willful disobedience.



Some Rules on Invoking Willful Disobedience

- ▶ Habituality is not an element of willful disobedience. The law warrants the dismissal of an employee without making any distinction between a first offender and a habitual delinquent where the totality of the evidence was sufficient to warrant his dismissal. In protecting the rights of the laborer, the law authorizes neither oppression nor self-destruction of the employer. (See Aparente vs. NLRC, G.R. No. 117652, April 27, 2000.)



Cases

- ▶ NEREN VILLANUEVA VS. GANCO RESORT AND RECREATION, INC., et. al, G.R. No. 227175, January 08, 2020;
- ▶ Galan v. Vinarao, G.R. No. 205912, October 18, 2017;
- ▶ In Conti vs. NLRC, G.R. No. 119253, April 10, 1997, it was ruled that the dismissal of an employee due to an alleged violation of a company policy, where it was found that the violation was acquiesced in by said employee's immediate superiors and the policy violated had not always been adhered to by the management, is an act not amounting to a breach of trust. Therefore, it is not a justification for said employee's dismissal.
- ▶ The formal challenge brought by employee of the reasonableness or the motives of a company's policy is not an excuse for the employee not to obey said policy. (GTE Directories Corp. vs. Sanchez, May 27, 1991.)
- ▶ Damage to employer is not important. Although there was no damage to the employer, the dismissal of the driver for insubordination was upheld. The lack of resulting damage is unimportant when the heart of the charge is the crooked and anarchic attitude of the employee towards his employer. (Nuez vs. NLRC, G.R. No. 107574 December 28, 1994.)



Gross and Habitual Neglect of Duties

1. The 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.
2. Negligence must be Habitual.
 - In order to constitute a just cause for the employee's dismissal, the neglect of duties must not only be gross but also habitual. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.
 - A single isolated act of negligence does not constitute a just cause for the dismissal of the employee.

However, in a number of cases, the SC upheld the validity of dismissal on the ground of gross negligence even if the act complained of was not habitual. Thus, a bank employee was found grossly negligent when she delivered newly approved credit cards to a person she had not even seen before and she did not even ask for receipts, thereby enabling fictitious persons to use these cards, causing P740,000.00 loss to the bank. (See Citibank vs. Gatchalian, G.R. No. 111222, January 18, 1995.)



Neglect of Duties

- ▶ Abandonment – clear and deliberate intent to discontinue employment (no intention to return)
- ▶ Elements:
 - Failure to report for work, or unjustified absence
 - **Clear intention to sever employment relationship**
- ▶ **Employer must prove existence of elements**

*DEMEX RattanCraft, Inc., et al v.
Rosalio A. Leron, G.R. No. 204288.
November 08, 2017*



Attitude

Jurisprudence:



Heavylift Manila, Inc. et al v. CA, Galaxy and NLRC, G.R. NO. 154410 October 20, 2005

- ▶ May be a valid ground, citing importance of teamwork, synergy and peace of company.
- ▶ Synonymous to loss of trust and confidence
- ▶ Employer must prove cause

Fraud or Willful Breach of Trust

Any act, omission, or concealment which involves a breach of legal duty, trust, or confidence justly reposed and is injurious to another.

- ▶ **Fraud, Defined.** Fraud is any act, omission, or concealment which involves a breach of legal duty, trust, or confidence justly reposed and is injurious to another.
- ▶ **Meaning of Breach of Trust.** Breach of trust refers to the violation by the employee of the trust and confidence reposed in him by his employer or duly authorized representative.



Elements of Loss of Confidence

1. The fraud or breach of trust is in connection to the employee's work; and
2. The employee concerned is holding a position of trust and confidence.



BASIS is Employee's Position as one Requiring Trust and Confidence of the Employer

- ▶ It is the breach of this trust that results in the employer's loss of confidence in the employee. (See Nat'l Sugar Refineries Corp. vs. NLRC, G.R. No. 122277 February 24, 1998.)



Managerial
Employees

Those routinely charged with
the care and custody of the
employer's money or property



Other Factors to Consider in Loss of Trust

- ▶ Title not Conclusive Indicator of Trust and Confidence. The determination hinges on the **authority actually possessed** by employee.
- ▶ Breach of Trust must be Willful. Ordinary breach will not suffice. It must be **willful and without justifiable excuse**, there must be basis therefor, and it must be supported by substantial evidence and not merely by the whims or caprice of the employer. (See Falguera vs. Linsangan, G.R. No. 114848 December 14, 1995.)



Commission of a Crime or Offense

- ▶ **Commission of a crime or offense by the employee against his employer or any immediate member of his family or his duly authorized representative, is a just cause for termination of employment.**



Commission of Crime or Offense

- ▶ Limited to employer, spouse, ascendants, descendants, siblings;
- ▶ Conviction or prosecution not required
- ▶ If criminal case is dismissed on technicality, the cause is still applicable (loss of confidence)



Analogous Causes

Examples:

- ▶ Gross inefficiency. Gross inefficiency is analogous to and closely related to gross neglect for both involve acts or omissions on the part of the employee resulting in damage to the employer or to his business. (See Lim vs. NLRC, G.R. No. 118434, July 26, 1996.)
- ▶ Disloyalty/conflict of interest. Disloyalty exists when one asserts an interest, or performs acts adverse to one's employer, such as secretly engaging in a business which renders him a competitor and rival of his employer. It constitutes a breach of an implied condition of the contract of employment. (See Elizalde International vs. Court of Appeals, G.R. No. L40553 February 26, 1981.)
- ▶ Dishonesty. Acts of dishonesty deemed to be patently inimical to the employer is analogous to breach of trust and is a valid cause for termination of employment.



No Separation Pay

- ▶ Section 7, Rule I, Book VI of Omnibus Rules Implementing the Labor Code
- ▶ General Rule: No Separation Pay (separation attributable to acts of employee)
- ▶ BUT, without prejudice to whatever rights, benefits and privileges under applicable individual contact, CBA or voluntary employer policy or practice.
- ▶ Supreme Court has allowed payment of Separation Pay for humanitarian considerations



Termination Process, Just Cause

Procedural Due Process: For termination of employment based on just causes, procedural due process requires that the employee be given the benefit of the so-called twin-notice and hearing, as follows:

1. First notice: Notice to Explain (NTE) or order to show cause. 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.
2. Hearing or formal investigation. 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.
3. Second notice: Notice of decision. 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. (See Art. 277[b] and Sec 2, Rule I, Book VI, IRR)



Termination Process, Just Cause

Service of Notices.

- ▶ In case of termination, the employee must be personally served with notices (notice to show cause and notice of termination). Ideally, this should be done by personally handing a copy of the notice to the employee concerned. However, if this is not possible, the notices may be served on the employee's last known address either by ordinary or registered mail (from legal viewpoint, registered mail is preferred).
- ▶ The mere posting of the notice on the bulletin board is not sufficient compliance. (Shoppers Gain Supermart, 1996)
- ▶ If the employee refused to receive notice, the employer must serve the same by registered mail at his last known address. (See Nueva Ecija Electric Coop case, 2005)



Termination Process, Just Cause

Opportunity to Respond.

- ▶ The very purpose of requiring the employer to observe proper termination process is to give the employee ample opportunity to respond to the charges against him or to defend himself. What the law require is ample opportunity.
- ▶ Ample opportunity means every kind of assistance that management must accord the employee to enable him to prepare adequately for his defense including legal representation.



Termination Process, Just Cause

- ▶ **Requirements for First Notice (NTE).**
- ▶ The first notice informing the employee of the charges against him should set out clearly what he is being held liable for. It should neither be pro-forma nor vague. This is consistent with the requirement that the employee should be afforded ample opportunity to be heard and not mere opportunity.
- ▶ Moreover, the dismissal, if necessary, must be based on the same grounds cited in the NTE. If the dismissal is based on grounds other than those specified in the notice, he is deemed to have been deprived of due process. (Glaxo Wellcome vs. NEW-DFA, 2005.)
- ▶ **Effect of Refusal of Employee to Participate in Investigation.**
- ▶ By the refusal of employee to participate in the investigation, he is deemed to have waived his right to defend himself. (Leonardo vs. NLRC, 2000.)



Dismissal and Compliance to Substantive/Procedural Aspects

- ▶ If dismissal is for just cause and with prior notice and hearing, the dismissal is valid.
- ▶ If the dismissal is for just cause but without prior notice and hearing, the dismissal is valid but the employer may be required to pay nominal damages to the dismissed employee. (Agabon Doctrine)
- ▶ If there is no just cause for dismissal, whether or not there is prior notice and hearing, the dismissal is illegal. The employee is entitled to reinstatement, backwages and damages.



Just Cause Cases

- ▶ Domingo, V. CSC and Manalo, G.R. No. 236050, June 17, 2020
- ▶ Matis v. Manila Electric Company, G.R. No. 206629. September 14, 2016
- ▶ Mamaril, v. The Red System Company, Inc., G.R. No. 229920. July 04, 2018
- ▶ Sterling Paper Products Enterprises v. KMM-KATIPUNAN and Esponga, G.R. No. 221493, August 2, 2017



Just Cause Cases

- ▶ The employee refused to participate in the investigation being conducted by the personnel management. The Court ruled that by refusing to participate, he cannot claim that he was denied due process. (Leonardo vs. NLRC, 2000.)
- ▶ The employment contract contains stipulation that the employment may be terminated by either party after “one month notice” or “one month salary in lieu of notice.” The stipulation was held to be illegal. The requirement of prior notice and opportunity to be heard cannot be substituted by mere payment of salary. (PNB vs. Cabansag, 2005.)



Authorized Causes for Termination (Art. 298, 299)

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Authorized Causes

- ▶ Termination of employment attributable to employer
- ▶ The termination is lawful, legal
 - Installation of Labor-Saving Devices
 - Redundancy
 - Retrenchment
 - Closure of business (unless intended to circumvent Labor Code)
 - Disease (Article 299)
 - Other Causes



Other Authorized Causes

- ▶ Total and Permanent Disability of Employee
- ▶ Expiration of period (term employment)
- ▶ Completion of project (project employment)
- ▶ Union Security Clause cases
- ▶ Employee fails probation
- ▶ Breach of contract
- ▶ Resignation



Installation of Labor-Saving Devices

- ▶ Must be done in good faith, to improve efficiency, increase production
- ▶ Cannot be used to ease out workers (abridgement of self-organization rights)
- ▶ Entitled to one month pay for every year of service, or one month pay if service is less than one year.



Redundancy

- ▶ Services of employee are in excess of what is reasonably demanded by actual requirements of enterprise;
- ▶ Superfluity, not necessarily duplication
 - Over-hiring of workers
 - Decreased volume of business
 - Reduction in product lines



Redundancy

Requisites

1. Written notice (DOLE & employee)
2. Payment of Separation Pay (one month per year)
3. Good faith in abolition of redundant position
4. Fair and Reasonable Criteria
 - a) Less preferred status
 - b) Efficiency
 - c) Seniority

SPI Technologies vs. Mapua, GR No. 191154, April 7, 2014



Hiring of contractor does not invalidate application of redundancy

- ▶ Serrano v. NLRC, Isetann Dept. Store, GR No. 117040, January 27, 2000;
- ▶ Manila Polo Club Employees Union v. Manila Polo Club, GR No. 172846, July 24, 2013



Retrenchment

Requisites

1. Written notice (DOLE & employee)
2. Payment of Separation Pay (one month per year)
3. Retrenchment necessary to prevent or minimize losses – Labor Arbiter determines, based on submission of employer

LA CONSOLACION COLLEGE OF MANILA, et al v.
Pascua, G.R. No. 214744. March 14, 2018



Four Standards of Retrenchment

1. Losses should be substantial, not merely de minimis (Substantiality)
2. Losses must be reasonably imminent (Urgency)
3. Reasonably necessary and likely to effectively prevent losses (Necessity)
4. Losses must be proven by sufficient and convincing evidence (Evidenced)

Lopez Sugar Corporation v. FFW, et al., GR Nos. 75700-01, August 30, 1990



Labor Relations – Jurisdiction

University of the Cordilleras College of Law



State Policy on Labor Relations

*It is the policy of the State to...
provide an adequate administrative
machinery for the expeditious
settlement of labor or industrial
disputes;*

-Article 218 Paragraph 1(e)



What are labor or industrial disputes?

Any controversy or matter concerning terms or 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.

What do we mean by “adequate administrative machinery”?



The mechanisms by which disputes or controversies between management and labor are discussed, deliberated upon and resolved, either by the disputants themselves (voluntary), or with the involvement of external bodies, including the state.

Labor Disputes

- ▶ Nature: arises from Er-Ee relationship, regardless of whether the disputants stand in the proximate relation of employer and employee;
 - SMCEU-PTGWO vs. Bersamira & SMC, GR No. 87700, June 1990)
 - Involves issue of SMC's exclusion of temporary, probationary & contractual employees in scope of CBA with union
- ▶ Subject Matter
 - Terms and conditions of employment
 - Association or representation of persons



Labor Disputes, Kinds

- ▶ Standards–Related
 - Compensation
 - Benefits
 - Working Conditions
- ▶ Labor Relations – Related
 - Organizational rights/ULP
 - Representation
 - Bargaining
 - Contract administration
 - Personnel policy
 - Employment tenure disputes

Standards–Related

Adequate administrative machinery

- ▶ NLRC Labor Arbiters and Commission
- ▶ Bureau of Labor Relations
- ▶ National Conciliation and Mediation Board
- ▶ Assumption of Jurisdiction of SOLE and President
- ▶ Voluntary Arbitration



Resolving Labor Disputes

1. Grievance procedure – CBA-prescribed, in-house mechanism for addressing complaints.
2. Conciliation – involves third person who meets with both parties and, by assuaging hurt feelings and cooling tempers, aids in reaching agreement.
3. Mediation – third person offers suggested solutions to dispute.
4. Arbitration – dispute is submitted to impartial third person who renders decision based on evidence, law and jurisprudence. Decision is enforceable.
 - Voluntary – by agreement of parties
 - Compulsory – directed by law. Primarily done by labor arbiters of the NLRC



Resolving Labor Disputes

5. Enforcement/Compliance Order – dispute arises from concern uncovered by the exercise of enforcement/visitorial power of SOLE, or adjudicatory powers of the DOLE Regional Directors (Articles 128, 129, Labor Code)
6. In case of labor disputes that may affect an industry indispensable to the national interest, the following apply:
 - Assumption of jurisdiction by DOLE
 - Certification to the NLRC for compulsory arbitration



The National Labor Relations Commission

» Jurisdiction, Case Flow,
Appeals, Cases



The National Labor Relations Commission

- ▶ Precursor: Court of Industrial Relations
- ▶ NLRC was created by the Labor Code
 - attached to the DOLE
 - Under EO 204, s. 2005, DOLE exercises administrative supervision over the commission
 - Under RA 9347, several changes to the composition of the divisions, rank equivalence, and reverted to the old version of NLRC's attachment to DOLE (program and policy coordination)
 - Equal representation from workers, employers & public sector



The National Labor Relations Commission

- ▶ NLRC exercises adjudicatory powers and other functions through its divisions (not the individual commissioners);
- ▶ En banc decisions pertain only to
 - Promulgation of rules governing hearing and disposition of cases in the divisions (e.g., 2011 NLRC Rules);
 - Recommending Labor Arbiters to the President
 - Allowing a division to hear and decide a case under the jurisdiction of another division



Jurisdiction of Labor Arbiters

- ▶ Original and exclusive jurisdiction to hear and decide the following cases involving all workers, whether agricultural or non-agricultural (Art. 224, LC, Rule V Section 1, 2011 NLRC Rules):
 1. Unfair labor practice cases; ULP Means "Unfair labor practice" means any unfair labor practice as expressly defined by the Code (Art. 219(K), Art. 259, Art. 260).
 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;



Jurisdiction of Labor Arbiters

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 278 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



Jurisdiction of Labor Arbiters

7. Original and exclusive jurisdiction over 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 (Section 10, Republic Act No. 8042, as amended by Republic Act No. 10022).
8. Wage distortion disputes in unorganized establishments not voluntarily settled by the parties pursuant to Republic Act No. 6727.
9. Enforcement of compromise agreements when there is non-compliance by any of the parties or if there is prima facie evidence that the settlement was obtained through fraud, misrepresentation or coercion (Article 227, Labor Code, as amended).
10. Other cases as may be provided by law.



Cases

- ▶ *Tumaodos vs. San Miguel Yamamura Packaging Corporation, GR No. 241865, Feb. 19, 2020*
- ▶ *Malcaba, et al., vs. Prohealth Pharma, Phils., GR No. 209085, June 6, 2018*
- ▶ *PAL vs. ALPAP, et al., GR No. 200088, Feb. 26, 2018 (reasonable causal connection Rule)*
- ▶ *Continental Micronesia, Inc. vs. Basso, GR No. 178382-83, September 23, 2015 (Doctrine of forum non conveniens)*

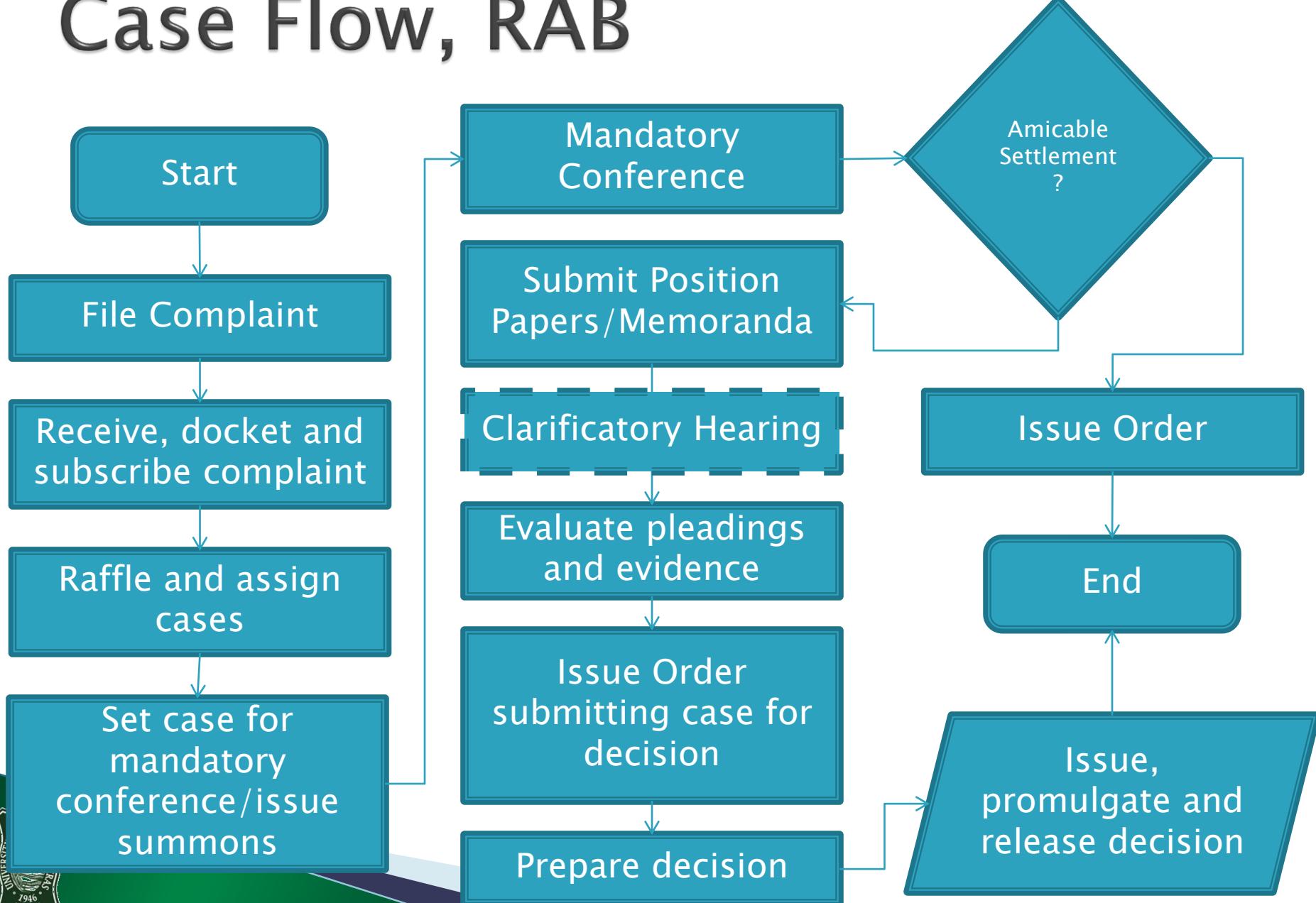


Venue

- ▶ Case may be filed in the RAB having jurisdiction over the workplace of complainant or petitioner
- ▶ Where two or more RABs have jurisdiction, venue resides in the RAB which first acquired it
- ▶ No objection to venue before the filing of position papers, issue is deemed waived
- ▶ May be by written agreement, or by motion for meritorious cases
- ▶ Option of the worker



Case Flow, RAB



Nature of Proceedings

- ▶ non-litigious in nature.
- ▶ Technical rules of courts of law are not applied



Summons

Within 2 days from receipt of a complaint or amended complaint - LA shall issue the required summons, attaching thereto a copy of the complaint or amended complaint and its annexes, if any (NLRC RULES, Rule V, Sec. 3).

Content – Date, time and place of MCMC

Return shall be submitted within 2 days from date of service immediately attached to and made part of the records. If no service was effected, the reason shall be stated



Prohibited Pleadings and Motions:

1. Motion to Dismiss the complaint except on the ground of

- ▶ lack of jurisdiction over the subject matter
- ▶ improper venue
- ▶ *res judicata*
- ▶ prescription
- ▶ forum shopping;



Motion To Dismiss When Filed

Before the date set for the Mandatory Conciliation and Mediation Conference (MCMC) (NLRC RULES, Rule V, Sec. 6).

No motion shall be allowed or entertained after the lapse of the period (NLRC RULES, Rule V, Sec. 7, As amended by *En Banc* Resolution No. 02-15).



Prohibited Pleadings and Motions:

- 2. Motion to declare the respondent in Default;**
- 3. Motion for a Bill of particulars;**
- 4. Petition for Relief from Judgement;**
- 5. Motion for Reconsideration of any decision or any order of the Labor Arbitrator;**
- 6. Appeal from any Interlocutory order of the Labor Arbitrator;**



Prohibited Pleadings and Motions:

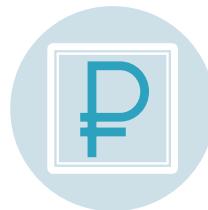
7. Appeal from Issuance of a certificate of finality of decision by the Labor Arbiter;
8. Motion for New trial;
9. Appeal from Orders issued by the Labor Arbiter in the course of execution proceedings; and
10. Such Other pleadings, motions and petitions of similar nature intended to circumvent above provisions



Mandatory Conciliation and Mediation Conference Purpose:



Amicably settling the case upon a fair compromise;



Determining the Real parties in interest;



Determining the Necessity of amending the complaint and including all causes of action;



Defining and simplifying the Issues in the case;



Entering into admissions or stipulations of facts; and



Threshing out all other preliminary matters



Who Presides Over And Takes Full Control Of the Proceedings

- ▶ General Rule:
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.

Exception:
where there is no Labor Arbiter assigned, conciliation and mediation may be conducted by:

- A Labor Arbitration Associate;
- Any other NLRC personnel with sufficient training and knowledge on conciliation and mediation, authorized by the Chairman; or
- A duly authorized personnel of the DOLE pursuant to any Memorandum of Agreement executed for this purpose



A photograph showing a man and a woman smiling and shaking hands over a desk. On the desk are some papers, a pen, and a small brown box. The background shows a window with blinds.

Compromise Agreement

A *compromise agreement* is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced.

Substantial Requirements



It must be freely entered into;



It must not be contrary to law, morals, or public policy;



It must be reasonable; and



It must be approved by the authority before whom the case is pending.

Formal Requirements

- ▶ 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 (NLRC RULES, Rule V, Sec. 8 (b)).



When Compromise Agreements May Be Effected

General Rule:

It may be effected at any stage of the proceedings and even when there is already a final executory judgment (See Civil Code Art. 2040).

Judgment may be set aside:

Rights (such as right to appeal) may be waived through a compromise agreement, notwithstanding a final judgment that has already settled the rights of the contracting parties. To be binding the compromise must be:

- Voluntarily, freely, intelligently executed by parties, with full knowledge of the judgment; and
- Not contrary to law, morals, good customs and public policy.



When Compromise Agreements May Be Effected

- ▶ Exception: When final judgment is already in the process of execution

Compromise Agreement operates as a novation of the judgement obligation, upon compliance with *either*:

1. The substitution's unequivocal declaration, or
2. Incompatibility of the old and new obligations in all points



Approval of the Compromise Agreement:

Labor Arbiter approves the agreement if he or she is satisfied that

1. the parties understand the terms, conditions and consequences thereof;
2. The agreement was entered into freely and voluntarily by the parties; and
3. That it was not contrary to law, morals, and public policy

A judgment based on a compromise agreement is IMMEDIATELY final and executory, and the right to appeal is deemed WAIVED.



Effect of a Compromise Agreement

Compromise agreement **duly entered into** in accordance with the NLRC Rules shall be final and binding upon the parties and shall have the force and effect of a judgment rendered by the Labor Arbiter (NLRC RULES, Rule V, Sec. 8 (d)).

BUT, a party may file a MOTION TO SET ASIDE THE AGREEMENT, citing fraud, intimidation or duress. An appeal can be taken from an order denying the motion.



Compromise Agreements With Assistance v. Without Assistance of DOLE

| Without the assistance of DOLE | With the assistance of DOLE |
|--|--|
| Validity/ Binding Effect | |
| Valid and binding upon the parties | Valid and binding upon the parties |
| Repudiation | |
| <p>It can be repudiated by the parties by going to the Commission.</p> <p>Note: ULP cases are not subject to compromise</p> | <p>General Rule: It can no longer be repudiated -- becomes final and binding upon the parties upon execution.</p> <p>Exceptions:</p> <ol style="list-style-type: none">1. In case of non-compliance with the compromise agreement; or2. If there is a <i>prima facie</i> evidence that the settlement was obtained through fraud, misrepresentation, or coercion. |



Remedies of Aggrieved Party when Compromise Agreement is Violated

Enforce compromise by writ of execution (D.O. No. 40-03 Rule XXII, Sec. 4); or

Regard it as rescinded and insist upon original demand.



When Mandatory Conciliation and Mediation Conference is Terminated

General Rule:

Mandatory Conciliation and Mediation Conference must be terminated within 30 calendar days from the date of the first conference.

Exception:

It may be extended for justifiable grounds (NLRC RULES, Rule V, Sec. 8 (f)).

Example: Both parties are earnestly exerting efforts to reach an amicable settlement of the case.



Motion for Postponement

- ▶ **General Rule:**

No motion for postponement shall be entertained.

- ▶ **Exception:**

When based on meritorious grounds *and* when filed at least 3 days before the scheduled hearing (NLRC RULES, Rule V, Sec. 8 (f)).



Effect of Failure of Settlement

If parties shall fail to agree, either in whole or in part, during the mandatory conciliation and mediation conference, the Labor Arbiter or the said duly authorized personnel shall proceed to the other purposes of the said conference (NLRC RULES, Rule V, Sec 9, as amended by *En Banc* Resolution No. 05-14).



Effect of Failure of Settlement

- ▶ The Labor Arbiter shall terminate the conciliation and mediation stage and shall direct the parties to simultaneously file their respective position papers on the issues agreed upon by the parties (NLRC RULES, Rule V, Sec. 12 (a)).



Non-Appearance of Parties

Complainant:

Non-appearance during 2 settings is a ground for dismissal of the case *without* prejudice (NLRC RULES, Rule V, Sec. 10).

Respondent:

1. When absent during first schedule, respondent will be given notice of second conference, with reminder that a subsequent absence will have him deemed to have waived his right to file a position paper.
2. Second conference absence, apply NLRC RULES, Rule V, Sec. 10.



Action when respondent fails to appear

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 (NLRC RULES, Rule V, Sec. 10).



Amendment of Complaint or Petition



FILED BEFORE THE LABOR ARBITER AT ANY TIME BEFORE THE FILING OF POSITION PAPER, WITH PROOF OF SERVICE OF A COPY THEREOF TO THE OPPOSING PARTIES (NLRC RULES, RULE V, SEC 11, AS AMENDED BY *EN BANC* RESOLUTION NO. 11-12).

NOTE:

IF THE AMENDMENT OF THE COMPLAINT OR PETITION INVOLVES IMPLEADING ADDITIONAL RESPONDENT/S, SERVICE OF ANOTHER SUMMONS IS NECESSARY TO ACQUIRE JURISDICTION OVER THE PERSON OF THE SAID RESPONDENT/S (NLRC RULES, RULE V, SEC 11, AS AMENDED BY *EN BANC* RESOLUTION NO. 11-12).



Submission of Position Paper and Reply

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 the Labor Arbiter within 10 calendar days from the date of termination of the mediation conference (NLRC RULES, Rule V, Sec 12 (a)).

No amendment of the complaint or petition shall be allowed after the filing of position papers, unless with leave of the Labor Arbiter (NLRC RULES, Rule V, Sec. 12 (b)).



Limitations on Position Papers

Position papers 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 place of their direct testimony, excluding those that may have been amicably settled (NLRC RULES, Rule V, Sec 12 (c)).



Reply

Within 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. It shall not allege or prove facts not referred to or included in the original or amended complaint or petition or position paper (NLRC RULES, Rule V, Sec 12 (d)).



Hearing or Clarificatory Conference

The Labor Arbiter shall, *motu proprio*, determine whether there is a need for a hearing or clarificatory conference (NLRC RULES, Rule V Sec. 13).

Immediately after the submission of the parties of their position paper or reply (NLRC RULES, Rule V, Sec 13).

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 (NLRC RULES, Rule V, Sec. 14 (a)).

LA prepares a written summary which shall be signed by parties and made part of the records of the case



Non-appearance of Parties and Postponement of Hearings and Clarificatory Conferences

The parties and their counsels appearing before the Labor Arbiter shall be prepared for continuous hearing or clarificatory conference (NLRC RULES, RULE V, Sec 15 (a)).

General Rule:

No postponement or continuance shall be allowed by the Labor Arbiter.

Exception:

Upon meritorious grounds and subject to the requirement of expeditious disposition of cases (NLRC RULES, Rule V, Sec. 15 (a)).



Non-appearance of Parties and Postponement of Hearings and Clarificatory Conferences

- ▶ The hearing or clarificatory conference shall be terminated within 30 calendar days from the date of the initial clarificatory conference (NLRC RULES, Rule V, Sec 15 (a)).
- ▶ As to OFWs, the period for conducting the mandatory conciliation and mediation conference, including hearing on the merits or clarificatory conference, shall not exceed 60 days, which shall be reckoned from the date of acquisition of jurisdiction by the Labor Arbiter over the person of the respondents (NLRC RULES, Rule V, Sec 15 (c)).



Effects of Non-Appearance of any of the Parties during the Clarificatory Conference

- ▶ 1. Proceedings shall be conducted *ex parte*; or
- ▶ 2. The case shall be deemed submitted for decision (NLRC RULES, Rule V, Sec. 15 (b)).



Submission of the Case for Decision



1. 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.



2. Upon termination of the clarificatory hearing or conference, the case is deemed submitted for decision (NLRC RULES, Rule V, Sec. 16).



Inhibition

- ▶ *1. Voluntary:*
A Labor Arbiter may voluntarily inhibit himself/herself from the resolution of a case and shall so state in writing the legal justifications therefore (NLRC RULES, Rule V, Sec. 17).
- ▶ *2. Upon Motion of a Party:*
A. Either on the ground of relationship within the fourth civil degree of consanguinity or affinity with the adverse party or counsel; or
- ▶ *B.* On question of partiality or other justifiable grounds, the Labor Arbiter may inhibit himself/herself from further hearing and deciding the case (NLRC RULES, Rule V, Sec. 17).



Period to Decide Case

30

Calendar Days, NO
EXTENSION

90

Calendar Days
from Receipt of
Complaint

In General

For OFW-Related Cases

Decision: Contents

- ▶ 1. Facts of the case;
- ▶ 2. Issues involved;
- ▶ 3. Applicable laws or rules;
- ▶ 4. Conclusions and the reasons therefore; and
- ▶ 5. Specific remedy or relief granted (NLRC RULES, Rule V, Sec. 19).

In cases involving monetary awards, the decision or orders of the Labor Arbiter shall contain the amount awarded.



Decisions with Reinstatement Orders

1. A statement that the reinstatement aspect is immediately executory; and
2. A directive for the employer to submit a report of compliance within 10 calendar days from receipt of the said decision (NLRC RULES, Rule V, Sec. 19)



Death of Parties

- ▶ 1. Complainant dies during the pendency of the proceedings, he/she may be substituted by his/her heirs.

- ▶ 2. If it is the individual Respondent, the provision of Section 20, of Rule 3 of Rule of Court shall apply (NLRC RULES, Rule V, Sec. 20, As amended by *En Banc* Resolution No. 11-12).



Finality of the Decision or Order of the LA

- ▶ The decisions, awards, or orders of the Labor Arbiter, the same are *final* and *executory*, unless appealed to the NLRC within the time provided under Article 229 of the Labor Code by any or both of the parties, within 10 calendar days from the receipt thereof by the counsel or authorized representative or the parties if not assisted by counsel or representative (NLRC RULES, Rule V, Sec. 21 (a)).



Certificate of Finality

- ▶ The Labor Arbiter issues a certificate of finality upon the expiration of 10 calendar days without any appeal having been made. 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 60 calendar days from date of mailing (NLRC RULES, Rule V, Sec. 21, as amended by *En Banc* Resolution No. 05-14).

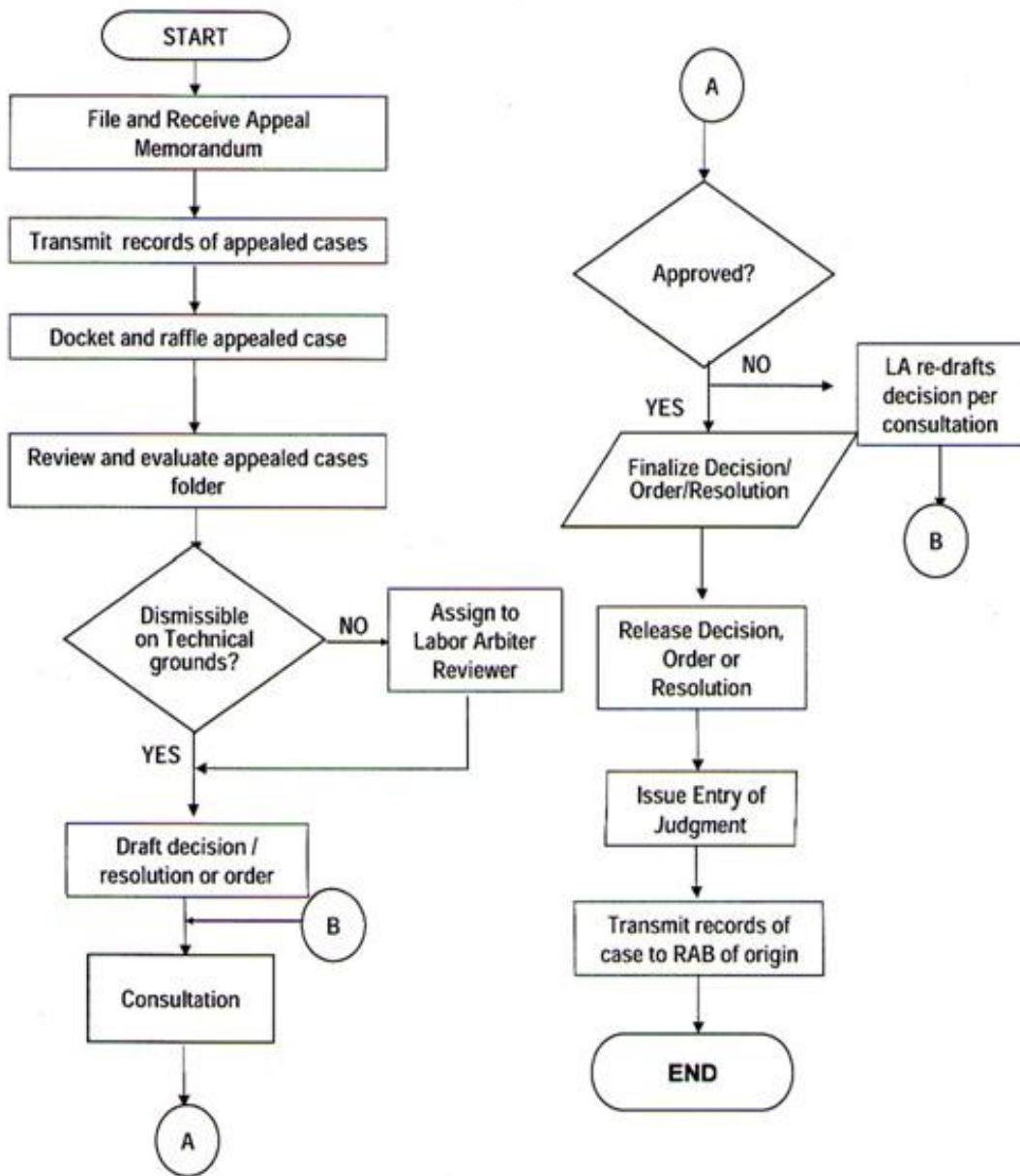


Revival and Re-Opening or Re-Filing of Dismissed Case and Lifting of Waiver

1. A party may file a motion to revive or re-open a case dismissed without prejudice, within 10 calendar days from receipt of notice of the order dismissing the same; otherwise, the only remedy shall be to re-file the case.
2. 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 (NLRC RULES, Rule V, Sec. 22).



**CASE FLOW AT THE
APPELLATE (COMMISSION PROPER) LEVEL**



Grounds

- ▶ 1. If the decision, award or order was secured through fraud or coercion, including graft and corruption;
- ▶ 2. If there is a *prima facie* evidence of abuse or discretion of the part of the Labor Arbitrator or Regional Director;
- ▶ 3. If made purely on questions of law; and/or
- ▶ 4. 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 (NLRC RULES, Rule VI, Sec. 2)



Where to File Appeal

- ▶ The appeal must be filed with the NLRC not later than the time allowed therein, 5 or 10 days depending on who rendered the decision (NLRC RULES, Rule VI, Sec. 1).
- ▶ Office receiving the appeal is RAB or DOLE Regional Office where the case was heard and decided (Section 3).

5 Days from receipt of
decision (DOLE RO
Under Article 129)

10 Days from receipt
of decision (Labor
Arbiter)



Periods of Appeal

- ▶ The reglementary period shall be counted from receipt of decisions, resolutions, or orders by the counsel or representative of record, and not by the parties (Lynx Industries Contractor, Inc., v. Tala, G.R. No. 164333, August 24, 2007).
- ▶ No motion or request for extension of the period within which to perfect an appeal shall be allowed (NLRC RULES, Rule VI, Sec. 1).



Nature of the period to appeal

- ▶ Period to appeal to NLRC: 10 calendar days from receipt of Labor Arbiter's decisions, awards or orders.
- ▶ Reglementary period to perfect an appeal is ***mandatory and jurisdictional in nature.***
- ▶ Failure to file an appeal within period renders assailed decision final and executory
- ▶ Appellate court has no jurisdiction to alter the judgement,
 - Aboitiz Shipping Employees Association v. Trajano, G.R. No. 112955, September 1, 1997
 - Charter Chemical & Coating Corp. v. Tan, G.R. No. 163891, May 21, 2009
 - LA CONSOLACION COLLEGE OF MANILA, et al v. Pascua, G.R. No. 214744. March 14, 2018



Nature of the period to appeal

- ▶ The right to appeal is a statutory right and the party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost (Ozaeta v. CA, G.R. No. 83281, December 4, 1989).



Requisites for Perfection of Appeal

1. Proof of service upon the other parties;
2. Filing of a verified memorandum of appeal* containing:
 - Grounds, issues raised
 - Arguments propounded
 - Relief(s) sought
3. In triplicate;

**Within required period of appeal, including statement appellant's date of receipt of decision, award, or order;*



Requisites for Perfection of Appeal

- ▶ 4. Proof of payment of the required appeal fee and legal research fee; otherwise, it will be dismissed but the dismissal is only discretionary;
- ▶ 5. In case of monetary award, an appeal by the employer may be perfected only by the posting of a bond (cash deposit or surety bond or property bond) *equivalent* in amount to the monetary award exclusive of damages and attorney's fees; and
- ▶ 6. It must be filed within the reglementary period:
10 days- decisions of Labor Arbiter
5 days- decisions of DOLE Regional Directors (NLRC RULES, Rule VI, Sec. 4).



Requisites for Perfection of Appeal

- ▶ Note:
- ▶ Where the employer failed to post a bond to perfect its appeal, the remedy of the employee is a motion to dismiss the appeal, not a petition for mandamus.
- ▶ The bond is *sine qua non* to the perfection of appeal from the labor arbiter's monetary decision (*Catubay v. NLRC*, G.R. No. 119289, April 12, 2000). Proper bond is acceptable (*UERM-Memorial Medical Center v. NLRC* G.R. No. 110419, March 3, 1997).



Requisites for Perfection of Appeal

- ▶ **Note:**
- ▶ A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal (NLRC RULES, Rule Vi, Sec. 4 (b)).
- ▶ **January 2017 – G.R. No. 207156, TURKS SHAWARMA COMPANY/GEM ZEÑAROSA vs. PAJARON & CARBONILLA**
- ▶ **October 17, 2013 – G.R. Nos. 178034 & 178117, McBurnie vs. Gauzon, EGI-Managers, Inc.**



Justification for Non-Posting of Bond

- ▶ 1. No monetary award (Aba v. NLRC, G.R. No. 122627, July 28, 1999);
- ▶ 2. The monetary award is not specified in the decision (Orozco v. CA, G.R. No. 155207, April 29, 2005).
- ▶ 3. In case of conflict between the body and fallo of the decision, the latter should prevail (Mendoza, Jr. v. San Miguel Foods, Inc., G.R. No. 158684, May 16, 2005).



Reduction of Appeal Bond

- ▶ **General Rule:**
 - ▶ No motion to reduce bond shall be entertained (NLRC RULES, Rule VI, Sec. 6).
- Exception:**
- ▶ Within the period of appeal, a Motion for Reduction of Appeal Bond may be made if the following requisites are met:
 1. A reasonable amount of appeal bond in relation to the monetary award is posted; and
 - ▶ 2. There exists a meritorious ground for such reduction, i.e. financial status of appellant (McBurnie v. Ganzon, G.R. Nos. 178034 & 178117, October 17, 2013).



McBurnie Guidelines

- ▶ 1. Meritorious Grounds, and Reasonable Amount Posted
- ▶ 2. Provisional Cash or Surety Bond of 10% of monetary award
- ▶ 3. Compliance to foregoing will suspend running of period to perfect appeal
- ▶ 4. NLRC retains authority to rule on motion to reduce bond and determine final amount of bond
- ▶ 5. In case of denial of motion to reduce bond, fresh 10 days for perfection of appeal is granted, from receipt of order



Compliance with the Requisites

- ▶ The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of period to perfect an appeal (NLRC RULES, Rule VI, Sec. 6, as amended by *En Banc* Resolution 14–15).
- ▶ While the bond requirement on appeals involving monetary awards has been relaxed in certain cases, this can only be done where there was *substantial compliance* of the Rules or where the appellants, at the very least, exhibited willingness to pay by posting a partial bond (Ong v. CA, G.R. No. 152494, September 22, 2004).



Consequences when NLRC Rules on the Motion to Reduce Appeal Bond

- ▶ **The order to post bond must be complied with. Otherwise, the case shall be dismissed, and the decision of the Labor Arbitrator shall become final and executory.**
- ▶ **Compliance with the foregoing conditions shall suffice to suspend the running of the 10-day regulatory period to perfect an appeal from the labor arbitrator's decision to the NLRC.**
- ▶ **Appellant must pay the bond in the amount of the monetary award, or as stated in the Order**
- ▶ **Appellant shall be given a fresh period of 10 days from notice of the NLRC order within which to perfect the appeal by posting the required appeal bond in the event that the NLRC.**

Motion Granted

Motion Denied, or Amount Exceeds Provisional Bond

Meritorious Ground

- ▶ The rule that the filing of a motion to reduce bond shall not stop the running of the period to perfect an appeal may be relaxed by the court when:
 - ▶ 1. Fundamental consideration of substantial justice;
 - ▶ 2. Prevention of miscarriage of justice or of unjust enrichment; or
 - ▶ 3. Special circumstances of the case combined with its legal merits and the amount and issue involved (Garcia v. KJ Commercial, G.R. No. 196830, February 29, 2012).



10% Appeal Bond Only

“Provisional”

- ▶ The 10% requirement in *McBurnie v. Ganzon* (supra) pertains to the reasonable amount which the NLRC would accept as the minimum of the bond that should accompany the motion to reduce bond in order to suspend the period to perfect an appeal under the NLRC rules. It is based on the judgement award and should in no case be construed as the minimum amount of bond to be posted in order to perfect appeal (NLRC RULES, Rule VI; Sara Lee PHL, Inc. v. Macatlang G.R. No. 180147, January 14, 2015).



If Using Surety Bond

1. Shall be issued by an NLRC or SC-accredited bonding company;
2. Required attachments:
 - a. Joint declaration under oath by the employer, his/her counsel, and the bonding company, attesting to genuineness of bond, effective from issuance until case's final disposition;
 - b. Indemnity agreement between the employer-appellant and bonding company;
 - c. Proof of security deposit or collateral securing the bond (checks not allowed);
 - d. Insurance Commission Certificate of Authority;
 - e. SEC Certificate of Registration;
 - f. SC or NLRC Certificate of Accreditation and Authority; and
 - g. Notarized board resolution or secretary's certificate from the bonding company showing its authorized signatories and their specimen signatures



Surety Bond

- ▶ The appellant shall furnish the appellee with a certified true copy of the said surety bond. The appellee shall verify the regularity and genuineness thereof and immediately report any irregularity to the Commission (NLRC RULES, Rule VI, Sec. 6).
- ▶ If 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 (NLRC RULES, Rule VI, Sec. 6).



Verification v. Certificate of Non-Forum Shopping

- ▶ The SC has held that insofar as verification is concerned, there is substantial compliance if the same is executed by an attorney, it being presumed that facts alleged by him are true to his knowledge that facts alleged by him are true to his knowledge and belief.
However, the same does not apply as regards the requirement of a certification against forum shopping (Santos v. CA, G.R. No. 141947, July 5, 2001).



Non-Service of Copy of Appeal to Appellee

- ▶ Failure to give a copy of the appeal to the appellee within 10 days is not fatal if the latter was not prejudiced by the delay in the service of said copy of the appeal – technical rules must yield to the broader interest of substantial justice (Modern Fishing Gear Labor Union v. Noriel, G. R. No. 53907, May 6, 1988).



Non-Service of Copy of Appeal to Appellee

▶ Note:

The appellee may file with the RAB or Regional Office where the appeal was filed, his/her answer or reply to appellant's memorandum or appeal, not later than 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 (NLRC RULES, Rule VI, Sec. 4 (c)).



Non-Service of Copy of Appeal to Appellee

- 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 (NLRC RULES, Rule VI, Sec. 4 (d)).



Execution Pending Appeal

- ▶ The decision of the labor arbiter ordering the reinstatement of a dismissed or separated employee shall be immediately executory insofar as the reinstatement aspect is concerned and the posting of an appeal bond by the employer shall not stay such execution.

Basis:

- ▶ Police power and the continuing threat or danger to the survival or even the life of the dismissed or separated employee and his family (Air PHL Co. v. Zamora, G.R. No. 148247, August 7, 2006).



Execution Pending Appeal

- ▶ **Note:**
Reinstatement is immediately executory even pending appeal only when the Labore Arbiter himself ordered the reinstatement (Mt. Carmel College v. Resuena, G.R. No. 173076, October 10, 2007).
- ▶ There is no need for a motion for the issuance of writ of execution on the reinstatement order as it is self-executory (Pioneer Texturizing Corp. v. NLRC, G.R. No. 118651, October 16, 1997).



Execution Pending Appeal

- ▶ Reinstatement pending appeal necessitates that it must be immediately self-executory without need for a writ of execution during the pendency of the appeal, if the law is to serve its noble purpose, and any attempt on the part of the employer to evade or delay its execution should not be allowed (Pfizer, Inc., v. Velasco, G.R. No. 177467, March 9, 2011).
- ▶ Upon appointment by the Securities and Exchange Commission of a rehabilitation receiver, all actions for claims before any court, tribunal or board (including the Labor Arbiter) against the corporation shall *ipso jure* be suspended (Garcia v. PAL, G.R. No. 164856, January 20, 2009).



Reinstatement Pending Appeal under Article 229 vs. Order of Reinstatement under Article 294

- ▶ **Note:**
- ▶ The rule of reinstatement pending appeal applies only to the order or reinstatement issued by the LA and to no other. This means that if the reinstatement order is issued by the NLRC on appeal, or by the CA or by the SC, there is a need to secure a writ of execution from the LA of Origin to enforce the reinstatement of the employee whose dismissal is declared illegal.



Options of the Employer in complying with an Order of Reinstatement

1. **Actual Reinstatement**- the employer can admit the dismissed employee back to work:
 - a. A. Under the same terms and conditions prevailing prior to his dismissal or separation; or
 - b. B. To a substantially equivalent position if the former position is already filled up; or



Options of the Employer in complying with an Order of Reinstatement

2. Payroll reinstatement:

Employee is paid his monthly salary without making him perform actual work.

Applies in termination cases where the labor court declares the dismissal illegal and orders reinstatement of the employee, but the employer does not want to actually or physically reinstate him.

At the employer's option, merely reinstates the employee in the payroll pending appeal.



Bureau of Labor Relations



Exclusive and Original Jurisdiction of the BLR

- ▶ To act on its own initiative or upon the request of either or both parties on all:
 - INTRA-union conflicts;
 - INTER-union conflicts; and
 - OTHER RELATED Labor Relations Disputes

May disputes of this nature be brought to Katarungang Pambarangay? (see Montoya vs. Escayo, G.R. Nos. 82211-12, March 1989)



Other Related Labor Relations Disputes

(Sec. 2, Rule XI D.O. 40-03)

- ▶ Shall include any conflict between a labor organization and the employer or any individual, entity, or group that is NOT a labor organization or worker's association.
- ▶ This includes:
- ▶ Cancellation of registration of unions and worker's associations; and
- ▶ A petition for interpleader.



EO 251, S. 1987

- ▶ removed from the jurisdiction of the BLR “all” labor-management disputes. The effect of *E.O. 251* is to *transfer* to the NCMB the mediation, conciliation, and arbitration functions of the BLR.
- ▶ The parties may, by agreement, settle their differences by submitting their case to a voluntary arbitrator rather than taking the case to the BLR.



EO 251, S. 1987

- ▶ This category of labor relations disputes as the name suggests is related to inter/intra union disputes to differentiate it from other labor-management disputes, such as those under
 - Article 128: Visitorial and enforcement power
 - Article 129: recovery of wages, simple money claims and other benefits
 - Article 224: Jurisdiction of the LA and NLRC
 - Article 273: Jurisdiction of VA
 - Article 278 (g): Secretary of Labor, on possibility of strikes and lockouts



Functions and Authority of BLR under the 1987 Administrative Code

- ▶ *Sec. 16. Bureau of Labor Relations* – The BLR shall:
- ▶ Set policies, standards, and procedures on the registration and supervision of legitimate labor union activities including denial, cancellation, and revocation of labor union permits;
- ▶ Set policies, standards and procedures relating to collective bargaining agreements, and the examination of financial records of accounts of labor organization to determine compliance with relevant laws;
- ▶ Provide proper orientation to workers on their schemes and projects for improvement of the standards of living of workers and their families.



Union Disputes

- ▶ **Intra–Union Disputes** – refer to any conflict between and among union members, including grievances arising from any violation of the rights and conditions of membership, violation of or disagreement over any provision of the union's constitution and by-laws, or disputes arising from chartering or affiliation.
- ▶ **Inter–Union Disputes** – refer to any conflict between and among legitimate labor organizations involving representation questions for purposes of collective bargaining or to any other conflict or dispute between legitimate labor organizations based on any violations of their rights as labor organizations.



Coverage of Inter/Intra-Union Disputes

(*Sec. 1 Rule XI, D.O. 40-03*)

- ▶ Cancellation of registration of a labor organization filed by its members or by any other labor organization;
- ▶ Conduct of election of union and worker's association officers/nullification of election of union and worker's association officers;
- ▶ Audit/accounts examination of union or worker's association funds;
- ▶ De-registration of CBA;
- ▶ Validity/invalidity of union affiliation or disaffiliation;
- ▶ Validity/invalidity of acceptance/non-acceptance for union membership;



Coverage of Inter/Intra-Union Disputes

(*Sec. 1 Rule XI, D.O. 40-03*)

- ▶ Validity/invalidity of impeachment/expulsion of union and worker's association officers;
- ▶ Validity/invalidity of voluntary recognition;
- ▶ Opposition to application for union and CBA registration;
- ▶ Violations of or disagreements over any provision in a union or worker's association constitution and by-laws;



Coverage of Inter/Intra-Union Disputes

(*Sec. 1 Rule XI, D.O. 40-03*)

- ▶ Disagreements over chartering or registration of labor organizations and CBAs;
- ▶ Violations of the rights and conditions of union or worker's association membership;
- ▶ Violations of the rights of legitimate labor organizations, except interpretation of CBAs; and
- ▶ Such other disputes or conflicts involving the rights to self-organization, union membership, and collective bargaining –
 - Between and among legitimate labor organizations; and
 - Between and among members of a union or worker's association.



Special Requirements as to the Filing of Cases

▶ Involving Entire Membership

- The complaint must be signed by at least 30% of the entire membership of the union; and
- It must also show exhaustion of administrative remedies.



Special Requirements as to the Filing of Cases

► Involving a Member Only

- In such case, only the affected member may file the complaint. Redress must first be sought within the union itself in accordance with its constitution and by-laws EXCEPT under any of the following circumstances:
 - Futility of intra-union remedies;
 - Improper expulsion procedure;
 - Undue delay in appeal as to constitute substantial injustice;
 - The action is for damages;



Special Requirements as to the Filing of Cases

▶ Involving a Member Only

- In such case, only the affected member may file the complaint. Redress must first be sought within the union itself in accordance with its constitution and by-laws EXCEPT under any of the following circumstances:
 - Lack of jurisdiction of the investigating body;
 - Action of the administrative agency is patently illegal, arbitrary, and oppressive;
 - Issue is purely a question of law;
 - Where the administrative agency had already prejudged the case; and
 - Where the administrative agency was practically given the opportunity to act on the case but did not.



Effects of Filing or Pendency of Inter/Intra-Union Dispute and other Labor Relations Disputes (*Sec. 3, Rule XI, D.O. 40-03*)

- ▶ The rights, relationships and obligations of the part-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 party litigants against each other and other parties-in-interest shall be governed by the decision so ordered.



Effects of Filing or Pendency of Inter/Intra-Union Dispute and other Labor Relations Disputes (*Sec. 3, Rule XI, D.O. 40-03*)

- ▶ The filing or pendency of any inter/intra-union disputes 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 elevation.



Modes of Appeal in Intra/Inter-Union Disputes (Rule XI, D.O. 40-03)

| | |
|----------------------------|---|
| Formal requirements | <ol style="list-style-type: none">1. Under Oath2. Consist of a memorandum of appeal3. Based on either of the following grounds:<ol style="list-style-type: none">a. Grave abuse of discretionb. Gross violation of the rules4. With supporting arguments and evidence |
| Period to appeal: | Within ten days from receipt of decision |
| To whom appealable | Bureau of Labor Relations – if the case originated from Med-Arbiter/Regional Director; Secretary of DOLE in case originated from BLR |
| Where filed | Regional office or to the BLR where the complaint originated (records transmitted to the BLR or Sec. within 24 hours from receipt of the memorandum on appeal) |



Summary of Rules on Inter/Intra Union Disputes

Who:

- ▶ For grounds under Section 1: any LLO members thereof specially concerned
- ▶ For grounds under Section 2: any party-in-interest

Where

- ▶ RO that issued its certificate of registration or certificate of creation of chartered local – if it involves labor unions with independent registration, chartered locals, workers association, its officers or members.
- ▶ Directly with the BLR if it involves a federation/national union/industry union, its officers or members



Summary of Rules on Inter/Intra Union Disputes

Formal requirements

- ▶ In writing
- ▶ Verified under oath
- ▶ Contains:
 - Name, address and other personal circumstances of the complainant or petitioner
 - Name, address and other personal circumstances of the respondent or person charged
 - Nature of complaint or petition
 - Facts and circumstances surrounding complaint or petition
 - Causes of action
 - Statement on exhaustion of Administrative Remedies
 - Reliefs prayed for
 - Certification of non-forum shopping
 - Other relevant matters



Administrative functions of BLR

1. Regulation and registration of labor unions
 2. Keeping of registry of labor unions
 3. Maintenance of a file of CBA's
 4. Maintenance of a file of all settlements or final decisions of the SC, CA, NLRC and other agencies on labor disputes
-
- ▶ BLR has no jurisdiction over implementation or interpretation of CBAs, which shall be subject of grievance procedure and/or Voluntary arbitration.



FUNCTIONS OF THE BUREAU OF LABOR RELATIONS ABSORBED BY NCMB

- ▶ Pursuant to *E.O. 126*, the National Conciliation and Mediation Board (NCMB) has absorbed the conciliation, mediation and voluntary arbitration functions of the BLR.
- ▶ The BLR functions, as it now stands are confined largely to union matters, collective bargaining and labor education.
- ▶ Jurisdiction over labor-management problems or disputes is also exercised by other offices such as the DOLE regional offices, the Office of the Secretary of Labor, NLRC, POEA, OWWA, SSS-ECC, the regional wage and productivity boards, NWPC, and even the regular courts over intra-corporate disputes.



National Conciliation and Mediation Board

1. Formulate policies, programs, standards, procedures, manuals of operations and guidelines pertaining to effective mediation and conciliation of all labor dispute.
2. Perform preventive mediation and conciliation functions.
3. Coordinate and maintain linkages with other sectors of institutions, and other government authorities concerned with matters relative to the prevention and settlement of labor disputes.
4. Formulates policies, plans, programs, standards, procedures, manuals of operations and guidelines pertaining to the promotion of cooperative and non-adversarial schemes, grievance handling, voluntary arbitration and other voluntary modes of dispute settlement.
5. Administer the voluntary arbitration program; maintain/update a list of voluntary arbitrators, compile arbitration awards and decisions.
6. Provide counseling and preventive mediation assistance particularly in the administration of collective agreements
7. Monitor and exercise technical supervision over the Board's programs being implemented in the regional offices; and
8. Perform such other functions as may be provided by law or assigned by the Secretary.



Conciliation-mediation

- ▶ a non-litigious, non-adversarial, less expensive and expeditious mechanism in assisting the parties towards voluntarily reaching their own mutually acceptable settlement to the labor dispute.

Any party to a labor dispute can avail of NCMB's conciliation mediation services

1. request for assistance
2. notice of preventive mediation
3. notice of strike/lockout.



Preventive Mediation

- ▶ May be filed by an individual, union or management on any issue arising from violation of the right to self-organization, including issues for notice of strike or lockout, to avoid the occurrence of actual labor disputes.
- ▶ **If issue is not resolved**, union or management may file a notice of strike or lockout, respectively.

