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HOUSE OF REPRESENTATIVES
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H. B. No. 1908

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Introduced by **HONORABLE BELLAFLOR J. ANGARA-CASTILLO**

EXPLANATORY NOTE

The 1987 Philippine Constitution promotes the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace. The Constitution also guarantees the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law.

Articles 263, 264 and 272 of the Labor Code of the Philippines, as amended, having been crafted under the Martial Law era, have to be aligned with the mandates of the 1987 Constitution to foster industrial peace based on social justice.

Particularly, paragraph (g) of Article 263 empowers the Secretary of Labor and Employment to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout, that on his/her opinion, is an "industry indispensable to national interest." This provides the Secretary of Labor and Employment very wide latitude of discretion in the exercise of assumption power to include labor disputes in an undergarment factory, match manufacturing, hotdog, and fish sauce factory as industries indispensable to the national interest.

With such power, the State restrains the exercise of the right to strike or lockout with a directive to workers to return to work and the management to accept the striking workers under the same terms and conditions. Article 264 declares as a prohibited act non-compliance with the procedural requirement and defiance of a Return-to-Work Order. Too often, the exercise of assumption power has not resulted in a peaceful settlement of labor disputes. Instead, it has triggered dismissal of workers as a penalty imposed under Article 272, the happening of picket line violence and violation of trade union rights, and even filing of criminal cases or company closures. This is borne by the cases of trade union rights violations against the Philippine government before the International Labour Organization (ILO) and the US Trade Representatives.

Thus, this bill seeks to amend Article Numbers 263, 264 and 272 of the Labor Code, as amended, so as to rationalize government interventions in labor disputes by adopting the Essential Services Criteria in the exercise of the assumption or certification power of the Secretary of Labor and Employment, providing conditions in its exercise and to decriminalize violations thereof.

In view of the foregoing, the passage of this bill is earnestly sought.


BELLAFLOR J. ANGARA-CASTILLO
Representative
Lone District, Province of Aurora

H. B. No. **1908**

Introduced by HONORABLE BELLAFLOR J. ANGARA-CASTILLO

AN ACT RATIONALIZING GOVERNMENT INTERVENTIONS IN LABOR DISPUTES BY ADOPTING THE ESSENTIAL SERVICES CRITERIA IN THE EXERCISE OF THE ASSUMPTION OR CERTIFICATION POWER OF THE SECRETARY OF LABOR AND EMPLOYMENT, AND DECRIMINALIZING VIOLATIONS THEREOF, AMENDING FOR THE PURPOSE ARTICLE NUMBERS 263, 264 AND 272 OF PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, AS AMENDED, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Article 263 of Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines, as amended, is hereby amended to read as follows:

"Article 263. Strikes, picketing and lockouts.

- a. It is the policy of the State to encourage free trade unionism and free collective bargaining.
- b. Workers shall have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection. The right of legitimate labor organizations to strike and picket and of employers to shall continue to be recognized and respected. However, no labor union may strike and no employer may declare a lockout on grounds involving inter-union and intra-union disputes.
- c. In case of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Department of Labor and Employment at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15 day cooling-off period shall not apply and the union may take action immediately.
- d. The notice must be in accordance with such implementing rules and regulations as the Secretary of Labor and Employment may promulgate.
- e. During the cooling-off period, it shall be the duty of the Department of Labor and Employment to exert all efforts at the mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of notice, the labor union may strike or the employer may declare a lockout.

1 f. A decision to declare a strike must be approved by a majority of the total union
2 membership in the bargaining unit concerned, obtained by secret ballot in
3 meetings or referenda called for that purpose. A decision to declare a lockout
4 must be approved by a majority of the board of directors of the corporation or
5 association or of the partners in a partnership obtained by secret ballot in a
6 meeting called for that purpose. The decision shall be valid for the duration of the
7 dispute based on substantially the same grounds considered when the strike or
8 lockout vote was taken. The Department of Labor and Employment may its own
9 initiative or upon the request of any affected party, supervise the conduct of the
10 secret balloting. In every case, the union or the employer shall furnish the
11 Department of Labor and Employment the results of the voting at least seven
12 days before the intended strike or lockout, subject to the cooling- off period
13 herein provided.

14
15 g. When there exists a labor dispute causing or likely to cause strike or lockout in
16 an industry engaged in essential services to the public, the Secretary of Labor
17 and Employment may assume jurisdiction over the dispute: *Provided*, That any of
18 the following conditions is present:

- 19
20 1. Both parties have requested the Secretary of Labor and Employment to
21 assume jurisdiction over the labor dispute; or
22
23 2. Upon request or petition by either parties, or *motu proprio* on the part of the
24 Secretary of Labor and Employment after a conference called for on the
25 propriety of its issuance has been conducted.

26
27 In such case, the Secretary of Labor and Employment may decide or certify the
28 labor dispute to the National Labor Relations Commission for compulsory
29 arbitration, or to a voluntary arbitrator or panel of voluntary arbitrators. The
30 assumption shall have the effect of automatically enjoining an impending strike or
31 lockout. if a strike/lockout has already taken place at the time of assumption, all
32 striking or locked out employees and other employees subject of the notice of
33 strike or lockout shall immediately return to work and the employer shall
34 immediately resume operations and readmit all employees under the same terms
35 and conditions prevailing before the strike or lockout.

36
37 Essential services refer to functions or services being rendered by an
38 establishment, which if interrupted, would endanger the life, personal safety or
39 health of whole or part of the population. For this purpose, the Secretary of Labor
40 and Employment, by appropriate regulations, shall determine the industries
41 engaged in essential services after consultations with the national tripartite
42 industrial peace council.

43
44 In labor disputes affecting industries engaged in essential services, it shall be the
45 duty of the union and employer to provide and maintain the operation or delivery
46 of services. In case of hospitals, clinics or medical institutions, the union and
47 employer shall provide and maintain an effective and functional workforce, whose
48 movement and services shall be unhampered and unrestricted, as are necessary
49 to ensure the proper and adequate protection of the life, personal safety and
50 health of their patients, most especially emergency cases, for the duration of the
51 labor dispute.

52
53 h. Within five (5) days from the issuance of the assumption or certification order, a
54 preliminary conference or hearing shall immediately be conducted by the office of
55 the Secretary of Labor and Employment, the National Labor Relations
56 Commission, or the voluntary arbitrator or panel of voluntary arbitrators as the
57 case may be.
58

- 1 i. In case of actual or impending strike or lockout in industries that are not
2 engaged in essential services, the Secretary of Labor and Employment may
3 assume jurisdiction upon the joint request of both parties in the labor dispute
4 after the mandatory conciliation. Either or both parties may also opt to submit to
5 compulsory or voluntary arbitration.
6
7 j. The foregoing notwithstanding, the President of the Philippines shall not be
8 precluded from determining industries that are engaged in essential services and
9 from intervening at any time and assuming jurisdiction over any labor dispute in
10 order to settle or terminate the same during severe national emergencies.”
11

12 **Section 2.** Article 264 of the same Code is hereby amended to read as follows:
13

14 **“Art. 264. Prohibited Activities.**
15

- 16 a. No labor organization or employer shall declare a strike or lockout without first
17 having bargained collectively in accordance with Title VII of this Book or
18 without first having filed the notice required in the preceding Article or without
19 the necessary strike or lockout vote first having been obtained and reported
20 to the Department of Labor and Employment.
21

22 No strike or lockout shall be declared after assumption of jurisdiction by the
23 President or the Secretary or after certification or submission of the dispute
24 to compulsory or voluntary arbitration or during the pendency of cases
25 involving the same grounds for the strike or lockout.
26

- 27 b. Any worker whose employment has been terminated as a consequence of an
28 illegal lockout shall be entitled to reinstatement with full back wages.
29

30 Mere participation of a worker or union officer in a strike declared illegal for
31 failure of the union to comply with procedural requirements under paragraph
32 (a) of this article shall not be a ground for termination of his or her
33 employment, even if a replacement had been hired by the employer during
34 such illegal strike.
35

- 36 c. No person shall obstruct, impede, or interfere with, by force, violence,
37 coercion, threats or intimidation, any peaceful concerted action including
38 picketing by employees during any labor controversy or in the exercise of the
39 right of self-organization or collective bargaining, or shall aid or abet such
40 obstruction or interference.
41

42 Any worker or union officer who knowingly participates in the commission of
43 unlawful acts during a strike may be declared to have lost his/her employment
44 after due process.
45

- 46 d. No employer shall use or employ any strike-breaker, nor shall any person be
47 employed as a strike-breaker.
48

- 49 e. No person engaged in picketing shall commit any act of violence, coercion or
50 intimidation or obstruct the free ingress to or egress from the employer's
51 premises for lawful purposes, or obstruct public thoroughfares.
52

- 53 f. No public official or employee, including officers and personnel of the Armed
54 Forces of the Philippines or the Philippine National Police, or armed person,
55 private security guards and similar personnel in the private security agency
56 shall introduce or escort in any manner replacement workers. The police
57 force shall keep out of the picket lines unless actual violence or other criminal
58 acts occur therein.
59

1 However, the Secretary of Labor and Employment or the National Labor
2 Relations Commission may seek the assistance of law enforcement agencies
3 to maintain peace and order, protect life and property, and/or enforce the law
4 and legal order.”
5

6 **Section 3.** Article 272 of the same Code is hereby amended to read as follows:
7

8 **“Article 272. Penalties.**
9

- 10 a. Any person, employer, organization or corporation found violating Article 264 of
11 this Code shall be imposed a fine in an amount of not less than Ten thousand
12 pesos (P10,000.00) nor more than One hundred thousand pesos
13 (P100,000.00), at the discretion of the National Labor Relations Commission.
14
15 b. Upon the recommendation of the Secretary of Labor and Employment and the
16 Secretary of National Defense, foreigners who violate the provisions of this Title
17 shall be subject to immediate and summary deportation by the Bureau of
18 Immigration and shall be permanently barred from re-entering the country
19 without the special permission of the President of the Philippines.
20
21 c. The regular courts shall have jurisdiction over any criminal action arising from
22 violation of any of the provisions of Article 264 of this Code, subject to the
23 required clearance from the Department of Labor and Employment on cases
24 arising out of or related to a labor dispute.
25
26 d. No criminal prosecution under Article 264 of this Code may be instituted without
27 a final judgment that an illegal strike or lockout has been committed. The
28 prescriptive period of the criminal offense shall be considered interrupted
29 during the pendency of administrative proceedings: *Provided, however,* That
30 the final judgment in the said proceedings shall not be binding in the criminal
31 case nor an evidence of guilt.
32
33 e. Complaints on acts or omissions of officers and personnel of the Armed Forces
34 of the Philippines or the Philippine National Police in violation of Article 264 of
35 this Code shall be filed with their respective agency without prejudice to the
36 filing of the appropriate cases before the Office of the Ombudsman.”
37

38 **SEC. 4. Implementing Rules and Regulations.** – The Secretary of Labor and Employment
39 shall promulgate the necessary rules and regulations to implement the provisions of this Act
40 within thirty (30) days from its effectivity.
41

42 **SEC. 5. Repealing Clause.** – Presidential Decree No. 442, as amended, otherwise known
43 as the "Labor Code of the Philippines", and all other acts, laws, presidential issuances, rules
44 and regulations inconsistent herewith are hereby repealed, amended or modified
45 accordingly.
46

47 **SEC. 6. Separability Clause.** – If any provision of this Act is declared unconstitutional or
48 invalid, the other provisions not affected thereby shall remain in full force and effect.
49

50 **Sec. 7. Effectivity Clause.** – This Act shall take effect fifteen (15) days after its publication
51 in the Official Gazette or in at least two (2) newspapers of general circulation.
52

53 Approved,