

**STATEMENT OF COVERAGE**

This *Pre-Week Guide* is presented in the form of an outline of basic principles which bar reviewees may use as a quick guide on the significant areas of labor law in the 2006 Bar Examinations. This is presented in three (3) parts. PART ONE covers Books 1 to 4 of the Labor Code and some important social legislations. PART TWO covers Book 5 and PART THREE covers Books 6 and 7 of the Labor Code.

**LABOR LAWS OF THE PHILIPPINES****PART TWO****LABOR RELATIONS LAW****1. What is the distinction between “labor relations” and “labor standards”?**

**Labor relations** - refers to that part of labor law which regulates the relations between employers and workers. *Example:* Book V of the Labor Code which deals with labor organizations, collective bargaining, grievance machinery, voluntary arbitration, conciliation and mediation, unfair labor practices, strikes, picketing and lockout.

**Labor standards** - refers to that part of labor law which prescribes the minimum terms and conditions of employment which the employer is required to grant to its employees. Examples: Books One to Four of the Labor Code as well as Book VI thereof which deal with working conditions, wages, hours of work, holiday pay and other benefits, conditions of employment of women, minors, househelpers and homeworkers, medical and dental services, occupational health and safety, termination of employment and retirement.

**2. What are the quasi-judicial bodies which exercise jurisdiction over labor cases?****A. With *Original* Jurisdiction:**

- Labor Arbiters;
- National Labor Relations Commission (NLRC);
- Secretary of Labor and Employment/his duly authorized representatives;
- DOLE Regional Directors/duly authorized hearing officers;
- Grievance Machinery and Voluntary Arbitrators;
- Bureau of Labor Relations (BLR)/Regional Office;
- Med-Arbiters;
- National Conciliation and Mediation Board (NCMB); and
- Philippine Overseas Employment Administration (POEA).

**B. With *Appellate* Jurisdiction:**

- National Labor Relations Commission (NLRC);
- Secretary of Labor and Employment; and
- Director of the Bureau of Labor Relations.

**C. With *Special Powers*:**

- Secretary of Labor and Employment;
- National Labor Relations Commission (NLRC);
- National Conciliation and Mediation Board (NCMB);
- President of the Philippines; and
- Regional Tripartite Wages and Productivity Board (RTWPB) / National Wages and Productivity Commission (NWPC).

**D. Jurisdiction over *social security benefits* claims:**

- Social Security System (SSS);
- Government Service Insurance System (GSIS); and
- Philippine Health Insurance Corporation (PHIC).

### **JURISDICTION OF LABOR ARBITERS**

#### **3. What is the nature of jurisdiction of Labor Arbiters?**

The jurisdiction is *original* and *exclusive* in nature.  
Labor Arbiters have **no appellate** jurisdiction.

#### **4. What are the cases falling under the jurisdiction of the Labor Arbiters?**

Labor Arbiters have jurisdiction over the following cases

1. Unfair labor practice (ULP) cases;
2. Termination disputes (or illegal dismissal cases);
3. Cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment, *if accompanied with claim for reinstatement*;
4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of *strikes* and *lockouts*; and
6. **Except** claims for Employees' Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanied with a claim for reinstatement.

#### **5. What are the money claims over which Labor Arbiters have jurisdiction?**

Money claims falling within the *original* and *exclusive* jurisdiction of the Labor Arbiters may be classified as follows:

1. any money claim, regardless of amount, *accompanied with a claim for reinstatement* (which involves a termination case); or
2. any money claim, *regardless of whether accompanied with a claim for reinstatement*, **exceeding** the amount of **P5,000.00** per claimant (which does not necessarily involve termination of employment).

#### **6. What is the effect of receivership or liquidation of business on the jurisdiction of Labor Arbiters?**

The jurisdiction conferred upon Labor Arbiters and the NLRC would not be lost simply because the assets of a former employer had been placed under receivership or liquidation.

#### **7. What is the effect of rehabilitation receivership on monetary claims of workers?**

**RUBBERWORLD (PHILS.), INC. VS. NLRC, ET AL.**, (G. R. No. 128003, July 26, 2000) Rehabilitation receivership of a company issued by the SEC has the effect of suspending all proceedings in all judicial or quasi-judicial bodies. The NLRC may not proceed with hearing of monetary claims. If already decided, the monetary awards cannot be executed. To proceed with the labor proceedings is grave abuse of discretion.

Only when there is liquidation that the monetary claims may be asserted. (**ALEMAR'S SIBAL AND SONS, INC. VS. NLRC, ET AL.** G. R. No. 114761, January 19, 2000) – The suspension of the proceedings is necessary to enable the rehabilitation receiver to effectively exercise its powers free from any judicial or extra-judicial interference that might unduly hinder the rescue of the distressed company. Once the receivership proceedings have ceased and the

receiver/liquidator is given the imprimatur to proceed with corporate liquidation, the SEC order becomes *functus officio*. Thus, there is no legal impediment for the execution of the decision of the Labor Arbiter for the payment of separation pay by presenting it with the rehabilitation receiver and liquidator, subject to the rules on preference of credits.

[See also **RUBBERWORLD (PHILS.), INC. VS. NLRC, ET AL.**, (G. R. No. 126773, April 14, 1999)].

**8. Do Labor Arbiters have jurisdiction over wage distortion cases?**

Labor Arbiters have jurisdiction over wage distortion cases only in **unorganized** establishments. In **organized** establishments, jurisdiction is vested with Voluntary Arbitrators.

**9. Do Labor Arbiters have jurisdiction over money claims of Overseas Filipino Workers (OFWs)?**

Labor Arbiters have jurisdiction over **all** monetary claims of Overseas Filipino Workers arising from 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.

(NOTE: The POEA continues to have jurisdiction over recruitment or pre-employment cases which are administrative in nature, involving or arising out of recruitment laws, rules and regulations, including money claims arising therefrom or violation of the conditions for issuance of license to recruit workers).

**10. How should the monetary claims of OFWs be computed?**

**Skippers Pacific, Inc. vs. Mira, et al.**, (G. R. No. 144314, November 21, 2002) Under Section 10, Republic Act No. 8042, the claim for unpaid salaries of overseas workers should be **whichever is less between salaries for unexpired portion of the contract or 3 months for every year of the remaining unexpired portion of the contract** (in case contract is one year or more).

**11. Do Labor Arbiters have jurisdiction over legality of strikes and lockouts?**

Labor Arbiters have jurisdiction over the issue of legality of strikes and lockouts, except in strikes and lockouts in industries indispensable to the national interest, in which case, either NLRC (*in certified cases*) or DOLE Secretary (*in assumed cases*) has jurisdiction.

**12. Do Labor Arbiters have injunction power?**

It must be noted that the provision in the 1990 version of the *NLRC Rules* granting injunction power to the Labor Arbiters is no longer found in its 2002 version. It is opined that this deletion is correct since Article 218 of the Labor Code grants injunctive power only to the "Commission" which obviously refers to the NLRC's various divisions and not to the Labor Arbiter.

**13. Do Labor Arbiters have contempt powers?**

Yes. However, it must be noted that according to the 2003 case of **Land Bank of the Philippines vs. Listana, Sr.**, [G. R. No. 152611, August 5, 2003], quasi-judicial agencies that have the power to cite persons for **indirect** contempt pursuant to Rule 71 of the Rules of Court can only do so by initiating them in the proper Regional Trial Court. It is not within their jurisdiction and competence to decide the indirect contempt cases. These matters are still within the province of the Regional Trial Courts.

**14. Is termination dispute a grievable issue over which Labor Arbiters have no jurisdiction?**

It has long been settled that a termination dispute (illegal dismissal case) is not a grievable issue, hence, Labor Arbiters have jurisdiction thereover. In **Atlas Farms, Inc. vs. NLRC**, [G. R. No. 142244, November 18, 2002], the Supreme Court affirmed the earlier rulings to this effect. Not only this. In the same *Atlas Farms* case, it was categorically ruled that given the

fact of dismissal, it can be said that the cases were effectively removed from the jurisdiction of the Voluntary Arbitrator, thus placing them within the jurisdiction of the Labor Arbiter. Where the dispute is just in the interpretation, implementation or enforcement stage, it may be referred to the grievance machinery set up in the CBA, or brought to voluntary arbitration. But, where there was already actual termination, with alleged violation of the employee's rights, it is already cognizable by the Labor Arbiter.

**15. Do Labor Arbiters have jurisdiction over monetary claims and illegal dismissal cases of employees of cooperatives?**

**a. Members of cooperatives are not employees.**

Cooperatives organized under Republic Act No. 6938, otherwise known as "*The Cooperative Code of the Philippines*" are composed of members. Issues on the termination of their membership with the cooperative do not fall within the jurisdiction of the Labor Arbiters.

**b. Labor Arbiters have jurisdiction over illegal dismissal cases of employees of cooperatives.**

In the case of **Perpetual Help Credit Cooperative, Inc. vs. Faburada**, [G. R. No. 121948, October 8, 2001], the Supreme Court ruled that employees of cooperatives (as distinguished from members thereof) are covered by the Labor Code and, therefore, Labor Arbiters have jurisdiction over their claims. There is no evidence in this case that private respondents are members of petitioner cooperative and even if they are, the dispute is about payment of wages, overtime pay, rest day and termination of employment. Under Art. 217 of the Labor Code, these disputes are within the original and exclusive jurisdiction of the Labor Arbiter.

**16. What are the cases which do not fall under the jurisdiction of the Labor Arbiters?**

- a. JURISDICTION OVER INTRA-CORPORATE DISPUTES.** -Labor Arbiters have no jurisdiction over termination of corporate officers and stockholders which, under the law, is considered intra-corporate dispute. It must be emphasized that a corporate officer's dismissal is always a corporate act and/or intra-corporate controversy and that nature is not altered by the reason or wisdom which the Board of Directors may have in taking such action. The Regional Trial Courts (**not** SEC) now have jurisdiction under R. A. 8799 (Securities Regulation Act of 2000). Jurisdiction of RTC includes adjudication of monetary claims of the corporate officer who was dismissed, (such as unpaid salaries, leaves, 13<sup>th</sup> month pay, bonuses, etc.), damages and attorney's fees. (*Lozon vs. NLRC*, G. R. No. 107660, Jan. 02, 1995, 240 SCRA 1)

**Who are corporate officers?** There are specifically three (3) officers which a corporation must have under the statute: *president*, *secretary*, and *treasurer*. However, the law does not limit corporate officers to these three. Section 25 of the Corporation Code gives corporations the widest latitude to provide for such other offices, as they may deem necessary. The *by-laws* may and usually do provide for such other officers, *e.g.*, *vice president*, *cashier*, *auditor*, and *general manager*. Consequently, the Supreme Court has held that one who is included in the by-laws of a corporation in its roster of corporate officers is an officer of said corporation and not a mere employee.

But what about if the position is not included in the roster of officers in the By-laws? Does the holder of the position to be considered a corporate officer?

In the case of **Nacpil vs. Intercontinental Broadcasting Corporation**, [G. R. No. 144767, March 21, 2002], petitioner argued that he is not a corporate officer of the IBC but an employee thereof since he had not been elected nor appointed as Comptroller and Assistant Manager by the IBC's Board of Directors. He points out that he had actually been appointed as such on January 11, 1995 by the IBC's General Manager. In support of his argument, petitioner underscores the fact that the IBC's By-Laws does not even include the position of comptroller in its roster of corporate officers. He, therefore, contended that his dismissal was a controversy falling within the jurisdiction of the labor courts.

The Supreme Court considered petitioner's argument untenable. It held that even assuming that he was in fact appointed by the General Manager, such appointment was subsequently approved by the Board of Directors of the IBC. That the position of Comptroller is not expressly mentioned among the officers of the IBC in the by-laws is of no moment, because the IBC's Board of Directors is empowered under Section 25 of the Corporation Code and under the corporation's by-laws to appoint such other officers as it may deem necessary. Consequently, as petitioner's appointment as comptroller required the approval and formal action of the IBC's Board of Directors to become valid, it is clear, therefore, that petitioner is a corporate officer whose dismissal may be the subject of a controversy cognizable by the SEC under Section 5(c) of P.D. 902-A (now by the RTC under R. A. No. 8799) which includes controversies involving both election and appointment of corporate directors, trustees, officers, and managers. Had petitioner been an ordinary employee, such board action would not have been required.

It must be noted that the Supreme Court has held that in most cases, the "by-laws may and usually do provide for such other officers," (*Union Motors vs. NLRC, 314 SCRA 531, 539 [1999]*) and that where a corporate officer is not specifically indicated in the roster of corporate officers in the by-laws of a corporation, the Board of Directors may also be empowered under the by-laws to create additional officers as may be necessary. (*Tabang vs. NLRC, 266 SCRA 462 [1997]*).

***One who rose from the ranks is a regular employee and not a mere corporate officer.***

In **Prudential Bank and Trust Company vs. Reyes**, [G. R. No. 141093, February 20, 2001], the Assistant Vice-President was appointed Accounting Clerk by the Bank on July 14, 1963. From that position, she rose to become supervisor. Then in 1982, she was appointed Assistant Vice-President which she occupied until her illegal dismissal on July 19, 1991. The Bank's contention that she merely holds an elective position and that, in effect, she is not a regular employee is belied by the nature of her work and her length of service with the Bank. As earlier stated, she rose from the ranks and has been employed with the Bank since 1963 until the termination of her employment in 1991. As Assistant Vice President of the foreign department of the Bank, she is tasked, among others, to collect checks drawn against overseas banks payable in foreign currency and to ensure the collection of foreign bills or checks purchased, including the signing of transmittal letters covering the same. It has been stated that "the primary standard of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer." Additionally, "an employee is regular because of the nature of work and the length of service, not because of the mode or even the reason for hiring them." As Assistant Vice-President of the Foreign Department of the Bank she performs tasks integral to the operations of the bank and her length of service with the bank totaling 28 years speaks volumes of her status as a regular employee of the bank. In fine, as a regular employee, she is entitled to security of tenure; that is, her services may be terminated only for a just or authorized cause. This being in truth a case of illegal dismissal, it is no wonder then that the Bank endeavored to the very end to establish loss of trust and confidence and serious misconduct on the part of private respondent but to no avail.

- b. JURISDICTION OVER GOVERNMENT CORPORATIONS WITH ORIGINAL CHARTERS.** - Labor Arbiters have jurisdiction over cases involving employees of government-owned or controlled corporations *without original charters* (organized under the Corporation Code). They have no jurisdiction if entity has *original* charter.
- c. JURISDICTION OVER IMMUNED ENTITIES.** - Labor Arbiters have no jurisdiction over labor cases involving entities immuned from suit. *Exception:* when said entities perform proprietary activities (as distinguished from governmental functions).

For instance, in an illegal dismissal case filed against the Asian Development Bank (ADB), the Supreme Court ruled that it enjoys immunity from legal process of every form and, therefore, the suit cannot prosper. ADB's officers, on their part, enjoy immunity in respect of all acts performed by them in their official capacity. The Charter and the Headquarters Agreement granting these immunities and privileges are treaty

covenants and commitments voluntarily assumed by the Philippine government which must be respected. (*Department of Foreign Affairs vs. NLRC, et al.*, G. R. No. 113191, September 18, 1996, 262 SCRA 39, 43-44).

In 1995, the Supreme Court had occasion to assert and reiterate said rule in an illegal dismissal case filed against a specialized agency of the United Nations. In dismissing the case, the Court said that being a member of the United Nations and a party to the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations, the Philippine Government adheres to the doctrine of immunity granted to the United Nations and its specialized agencies. Both treaties have the force and effect of law. (*Lasco, et al. vs. United Nations Revolving Fund for Natural Resources Exploration [UNRFNRE], et al.*, G. R. Nos. 109095-109107, February 29, 1995; *World Health Organization vs. Aquino*, 48 SCRA 242 [1972]).

There is an exception to the immunity rule as exemplified by the case of **United States vs. Hon. Rodrigo**, [G. R. No. 79470, Feb. 26, 1990, 182 SCRA 644, 660]. Here, it was held that when the function of the foreign entity otherwise immune from suit, partakes of the nature of a *proprietary* activity, such as the restaurant services offered at John Hay Air Station undertaken by the United States Government as a commercial activity for profit and not in its *governmental* capacity, the case for illegal dismissal filed by a Filipino cook working therein is well within the jurisdiction of Philippine courts. The reason is that by entering into the employment contract with the cook in the discharge of its *proprietary functions*, it impliedly divested itself of its sovereign immunity from suit.

- d. JURISDICTION OVER LOCAL WATER DISTRICTS.** - In **Hagonoy Water District vs. NLRC**, [G. R. No. 81490, August 31, 1988], the Supreme Court ruled that local water districts are quasi-public corporations and, therefore, the dismissal of their employees are governed by the civil service laws, rules and regulations. (*See also Tanjay Water District vs. Gabaton*, G. R. No. 63742, April 17, 1989).

However, although the Labor Arbiter has no jurisdiction, the Supreme Court, in **Zamboanga City Water District vs. Buat**, [G. R. No. 104389, May 27, 1994], did not allow petitioner to belatedly raise the issue of jurisdiction before it, considering that it never raised said issue before the Executive Labor Arbiter, the NLRC or even before the Supreme Court in another related case. In fact, it was petitioner itself which filed the complaint before the Executive Labor Arbiter and sought affirmative relief therefrom and participated actively in the proceedings therein. Although jurisdiction over strikes and dismissals of employees in local water districts is lodged not with the NLRC but with the Civil Service Commission, here, the petitioner is already estopped from assailing the jurisdiction of the NLRC and is, therefore, bound to respect all the proceedings therein.

- e. JURISDICTION OVER TORTS.** - As earlier emphasized, Labor Arbiters and the NLRC have no power or authority to grant reliefs from claims that do not arise from employer-employee relations. They have no jurisdiction over quasi-delict or tort per Article 2176 of the Civil Code that have no reasonable causal connection to any of the claims provided for in the Labor Code, other labor statutes, or collective bargaining agreements.

In **Tolosa vs. NLRC**, [G. R. No. 149578, April 10, 2003], a complaint was lodged with the Labor Arbiter but later, the Supreme Court ruled that the Labor Arbiter has no jurisdiction over the case because it was established that the same was in the nature of an action based on a quasi-delict or tort, it being evident that the issue presented therein involved the alleged gross negligence of the co-employees (shipmates) of Captain Tolosa, the deceased husband of the complainant, with whom Captain Tolosa had no employer-employee relationship.

#### **SUMMARY OF OTHER ISSUES BEYOND JURISDICTION OF THE LABOR ARBITERS OR NLRC.**

In addition to the foregoing, other issues over which the Labor Arbiter or NLRC has no jurisdiction may be summed up as follows:

1. Cases involving claims for Employees Compensation, Social Security, Medicare and maternity benefits. (*Article 217 [6], Labor Code*).
  2. Issue of replevin intertwined with a labor dispute. (*Basaya, Jr. vs. Militante, 156 SCRA 299*).
  3. Cases arising from violation of training agreement. (*Singapore Airlines vs. Hon. Ernani Cruz Pano, G. R. No. L-47739, June 22, 1983; 122 SCRA 671*).
  4. Cases involving claim for liquidated damages for breach of a contractual obligation. Also the issue of liability in suretyship. (*Singapore Airlines vs. Hon. Ernani Cruz Pano, G. R. No. L-47739, June 22, 1983; 122 SCRA 671*).
  5. Cases involving issue of whether sale of property being levied on execution was done in bad faith. (*Asian Footwear vs. Soriano, 142 SCRA 49*).
  6. Cases of contempt involving a judge of the regular court. (*Tolentino vs. Inciong, 91 SCRA 563*).
  7. Cases involving an injunction filed by a third party with the regular court against the sheriff enforcing a decision in a labor case. (*Philippine Association of Free Labor Unions [PAFLU] vs. Salas, 158 SCRA 53*).
  8. Cases involving claim of employee for cash prize offered under the Innovation Program of a company which, although arising from employer-employee relationship, require the application of general civil law on contracts. (*San Miguel Corporation vs. NLRC, 161 SCRA 719*).
  8. Cases initiated by employer against an employee for sum of money and damages for cost of repair jobs made on an employee's personal cars as well as for the purchase price of parts and vehicles. (*Molave Motor Sales, Inc. vs. Laron, 129 SCRA 485*).
  9. Claims for commissions and certain reimbursements made by an independent contractor. (*Sara vs. Agarrado, 166 SCRA 625*).
  10. Cases filed by government-owned corporations performing governmental functions. (*National Housing Corporation vs. Juco, 134 SCRA 172; Metropolitan Waterworks and Sewerage System vs. Hernandez, 143 SCRA 602; PNOC-Exploration Corporation vs. NLRC, 164 SCRA 501*).
  11. Violation of labor laws which are penal in nature. Examples are illegal recruitment cases, (*Section 10, Rule X, Book II, Rules and Regulations Governing Overseas Employment*) or criminal offenses or felonies committed in the course of strikes and lockouts. (*Article 264, Labor Code*).
  12. Insolvency proceedings in the enforcement of the worker preference ordained under Article 110 of the Labor Code.
  13. Exercise of equity jurisdiction to enjoin activities for purposes of compelling an employer to ignore a clear mandate of the law. (*Bulletin Publishing Corporation vs. Sanchez, 144 SCRA 678*).
  14. Administrative action against the licensee or holder of authority cognizable by the POEA which could proceed independently from the criminal action. (*Section 12, Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995*).
  15. Review of recruitment violation cases and other related cases decided by the POEA. The Secretary of Labor and Employment has exclusive jurisdiction over these cases. (*Section 1, Rule IV, Book VI, Rules and Regulations Governing Overseas Employment*).
  16. Cases involving issues which do not arise from, or has no reasonable causal connection with, employer-employee relationship. (*Pepsi-Cola Distributors vs. Galang, 201 SCRA 695; Grepalife Assurance Corporation vs. NLRC, 187 SCRA 694; Cosmopolitan Funeral Homes vs. Maalat, 187 SCRA 773; Insular Life vs. NLRC, 179 SCRA 459*).
17. **What is the doctrine of forum non conveniens? May this be invoked against the exercise of jurisdiction by the Labor Arbiters/NLRC?**

In the case of **The Manila Hotel Corp. vs. NLRC**, (G. R. No. 120077, October 13, 2000), the Supreme Court ruled that under the international law **doctrine of forum non conveniens**, the NLRC has no jurisdiction when the main aspects of the case transpired in foreign jurisdictions and the only link that the Philippines has with the case is that the employee is a Filipino Citizen. In this case, the Filipino was hired directly (without the intervention of the POEA) by the foreign employer while he was working in

the Sultanate of Oman and was assigned to a hotel in China. The NLRC is not a convenient forum given that all the incidents of the case – from the time of recruitment, to employment, to dismissal - occurred outside the Philippines. The inconvenience is compounded by the fact that the proper defendants – the Palace Hotel and MHICL - are not nationals of the Philippines. Neither are they “doing business in the Philippines.” Likewise, the main witnesses, Mr. Schmidt and Mr. Henk are non-residents of the Philippines.

The said *Manila Hotel* case should be distinguished from **Philippine National Bank vs. Cabansag**, [G. R. No. 157010, June 21, 2005]. Here, respondent was hired by the Singapore branch of petitioner-bank while she was a tourist in Singapore in 1998. Petitioner is a private banking corporation organized and existing under the laws of the Philippines, with principal offices at the PNB Financial Center, Roxas Boulevard, Manila. At the time, too, the Branch Office had two (2) types of employees: (a) expatriates or the regular employees, hired in Manila and assigned abroad including Singapore; and (b) locally (direct) hired. She applied for and was hired as Branch Credit Officer. After her 3-month probationary period, she was terminated. Subsequently, she filed a complaint before a Labor Arbiter. One of the issues presented before the Supreme Court was whether or not the arbitration branch of the NLRC in the National Capital Region has jurisdiction over the instant controversy. The Supreme Court, in answering this query in the affirmative, ruled that the Labor Arbiter has jurisdiction because the issue here involves termination of an OFW. While she may have been directly hired in Singapore by petitioner, however, noteworthy is the fact that respondent likewise applied for and secured an Overseas Employment Certificate from the POEA through the Philippine Embassy in Singapore. The Certificate declared her a bona-fide contract worker in Singapore. Thus, even assuming *arguendo* that she was considered at the start of her employment as a “direct hire” governed by and subject to the laws, common practices and customs prevailing in Singapore, she subsequently became a contract worker or an OFW who was covered by Philippine labor laws and policies upon certification by the POEA. At the time her employment was illegally terminated, she already possessed the POEA Employment Certificate. Moreover, petitioner admits that it is a Philippine corporation doing business through a branch office in Singapore. Significantly, respondent’s employment by the Singapore branch office had to be approved by the president of the bank whose principal offices were in Manila. This circumstance militates against petitioner’s contention that respondent was “locally hired”; and totally “governed by and subject to the laws, common practices and customs” of Singapore, not of the Philippines. Instead, with more reason does this fact reinforce the presumption that respondent falls under the legal definition of *migrant worker*, in this case one deployed in Singapore. Hence, petitioner cannot escape the application of Philippine laws or the jurisdiction of the NLRC and the Labor Arbiter.

### JURISDICTION OF THE NLRC

#### **18. What are the two kinds of jurisdiction of the NLRC?**

The National Labor Relations Commission exercises two (2) kinds of jurisdiction:

1. *original* jurisdiction; and
2. *exclusive appellate* jurisdiction.

#### **1. Original jurisdiction.**

- a. Injunction in ordinary labor disputes to enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party.
- b. Injunction in strikes or lockouts under Article 264 of the Labor Code.
- c. Certified labor disputes causing or likely to cause a strike or lockout in an industry indispensable to the national interest, certified to it by the Secretary of Labor and Employment for compulsory arbitration.

#### **2. Exclusive appellate jurisdiction.**

- a. All cases decided by the Labor Arbiters including contempt cases.
- b. Cases decided by the DOLE Regional Directors or his duly authorized Hearing Officers (under Article 129) involving recovery of wages, simple

money claims and other benefits not exceeding P5,000 and not accompanied by claim for reinstatement.

**19. What is the distinction between the jurisdiction of the Labor Arbiters and the NLRC?**

The NLRC has *exclusive appellate* jurisdiction on all cases decided by the Labor Arbiters. The NLRC does *not* have *original* jurisdiction on the cases over which Labor Arbiters have *original* and *exclusive* jurisdiction (see above enumeration). If a claim does not fall within the *exclusive original* jurisdiction of the Labor Arbiter, the NLRC **cannot** have *appellate jurisdiction* thereover.

**POWERS OF THE DOLE SECRETARY  
AND HIS DULY AUTHORIZED REPRESENTATIVES**

**20. What is the visitorial and enforcement power of the DOLE Secretary and his duly authorized representatives under Article 128 of the Labor Code?**

1. Power to inspect employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of the Labor Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

2. Power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection.

3. Power to issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

4. Power to order stoppage of work or suspension of operations of any unit or department of an establishment when non-compliance with the law or implementing rules and regulations poses grave and imminent danger to the health and safety of workers in the workplace.

**21. What is the power to assume jurisdiction or certify "national interest" labor disputes to NLRC?**

When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. (*Article 263 [g], Labor Code*).

**22. What are the cases falling under the DOLE Secretary's appellate power?**

- a. Orders issued by the duly authorized representative of the Secretary of Labor and Employment under Article 128 (*Visitorial and Enforcement Power*) may be **appealed** to the latter. (Art. 128).
- b. *Denial of application* for union registration or *cancellation* of union registration originally rendered by the Bureau of Labor Relations (BLR) may be appealed to the Secretary of Labor and Employment. (NOTE: If originally rendered by the Regional Office, appeal should be made to the BLR).
- c. Decisions of the Med-Arbiter in certification election cases are appealable to the DOLE Secretary. (Art. 259). (NOTE: Decisions of Med-Arbiters in intra-union disputes are appealable to the BLR).

**JURISDICTION OF THE DOLE REGIONAL DIRECTORS / DULY AUTHORIZED HEARING OFFICERS.**

**23. What are the money claims falling under the jurisdiction of DOLE Regional Directors?**

Under Article 129, the Regional Director or any of the duly authorized hearing officers of DOLE have jurisdiction over claims for recovery of wages, simple money claims and other benefits, provided that:

1. the claim must arise from employer-employee relationship;
3. the claimant does not seek reinstatement; and
4. the aggregate money claim of each employee does **not** exceed **P5,000.00**.

#### **JURISDICTION OF GRIEVANCE MACHINERY IN THE CBA**

##### **24. What are the cases falling under the jurisdiction of the Grievance Machinery?**

Any grievance arising from:

1. the interpretation or implementation of the Collective Bargaining Agreement (CBA); and
2. the interpretation or enforcement of company personnel policies.

*(NOTE: All grievances submitted to the grievance machinery which are not settled within seven (7) calendar days from the date of its submission shall automatically be referred to voluntary arbitration prescribed in the CBA)*

#### **JURISDICTION OF VOLUNTARY ARBITRATORS OR PANEL OF VAs**

##### **25. What are the cases falling under the jurisdiction of the Voluntary Arbitrator or panel of Voluntary Arbitrators?**

The Voluntary Arbitrator (or panel of Voluntary Arbitrators) has **original** and **exclusive jurisdiction** over the following:

1. all *unresolved grievances* arising from the interpretation or implementation of the collective bargaining agreement after exhaustion of the grievance procedure; and
2. all *unresolved grievances* arising from the implementation or interpretation of company personnel policies. (Article 261).
3. all other labor disputes including unfair labor practices and bargaining deadlocks, upon agreement of the parties. (Article 262).

##### **26. How should cases falling under the jurisdiction of the Voluntary Arbitrator but erroneously filed with the Labor Arbiters or DOLE Regional Offices be processed?**

They shall immediately be disposed and referred to the Grievance Machinery or Voluntary Arbitration provided in the CBA.

##### **27. In case of conflict, who has jurisdiction over termination disputes, Labor Arbiters or Voluntary Arbitrator?**

**ATLAS FARMS, INC. VS. NLRC (G.R. NO. 142244; Nov. 18, 2002)** Jurisdiction over termination disputes belongs to Labor Arbiters and NOT with Grievance Machinery nor Voluntary Arbitrator [cited *Maneja vs. NLRC*, 290 SCRA 603, 616, (1998)].

**CELESTINO VIVERO VS. COURT OF APPEALS, HAMMONIA MARINE SERVICES, ET AL., (G. R. NO. 138938, OCTOBER 24, 2000)** - Under Article 262, the Voluntary Arbitrator may assume jurisdiction only when agreed upon by the parties. Policy Instructions No. 56 issued by DOLE Secretary Confesor clarifying the jurisdiction of Labor Arbiters and Voluntary Arbitrations does not apply. It reiterated the ruling that dismissal is not a grievable issue.

#### **JURISDICTION OF THE BUREAU OF LABOR RELATIONS (BLR)/MED-ARBITERS**

##### **28. What are the cases falling under the jurisdiction of the BLR?**

The BLR has *original* and *exclusive jurisdiction* over the following:

1. “*Inter-union disputes*” or “*representation disputes*” which refer to cases involving petition for certification election filed by a duly registered labor organization which is seeking to be recognized as the *sole and exclusive bargaining agent* of the rank-and-file employees in the appropriate bargaining unit of a company, firm or establishment.

2. “*Intra-union disputes*” or “*internal union disputes*” which refer to disputes or grievances arising from any violation of or disagreement over any provision of the *constitution and by-laws* of the union, including any violation of the rights and conditions of union membership provided for in the Labor Code.

3. All disputes, grievances or problems arising from or affecting labor-management relations in all workplaces, **except** those arising from the interpretation or implementation of the CBA which are subject of grievance procedure and/or voluntary arbitration.

**29. What are the relevant administrative functions of the BLR?**

The BLR has the following administrative functions: (1) registration of labor unions; (2) keeping of registry of labor unions; and (3) maintenance and custody of CBAs.

**JURISDICTION OF THE NATIONAL CONCILIATION AND MEDIATION BOARD (NCMB)**

**30. What is the jurisdiction of the NCMB?**

Executive Order No. 251 which created the National Conciliation and Mediation Board (NCMB) ordains that the conciliation, mediation and voluntary arbitration functions of the Bureau of Labor Relations (BLR) shall be absorbed by NCMB. It is an attached agency under the administrative supervision of the Secretary of Labor and Employment.

The NCMB has jurisdiction over conciliation, mediation and voluntary arbitration cases. It performs preventive mediation and conciliation functions. It administers the voluntary arbitration program; maintains/updates a list of voluntary arbitrators; compiles arbitration awards and decisions; and provides counseling and preventive mediation assistance particularly in the administration of collective agreements.

It is with the NCMB that Notices of Strike or Lockout are filed.

**JURISDICTION OF POEA**

**31. What are the cases falling under the jurisdiction of the POEA?**

The POEA has no more jurisdiction over monetary claims of OFWs, the same having been transferred to the Labor Arbiters by virtue of R. A. 8042. POEA’s jurisdiction is now confined to recruitment or pre-employment cases which are administrative in nature, involving or arising out of recruitment laws, rules and regulations, including money claims arising therefrom or violation of the conditions for issuance of license to recruit workers.

**POWER OF PRESIDENT TO ASSUME JURISDICTION OVER NATIONAL INTEREST CASES**

**32. May the President assume jurisdiction over national interest cases?**

Yes. In connection with labor disputes causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the President of the Philippines shall not be precluded from determining the industries that, in his opinion, are indispensable to the national interest, and from intervening at any time and *assuming jurisdiction* over any such labor dispute in order to settle or terminate the same. (*Article 263[g], Labor Code*).

**POWER OF REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD (RTWPB)/  
NATIONAL WAGES AND PRODUCTIVITY COMMISSION (NWPC)**

**33. What are the powers of the RTWPB and NWPC?**

The RTWPB has the power to determine and fix minimum wage rates applicable in the region, provinces or industries therein and to issue the corresponding wage order, subject to the guidelines issued by the NWPC.

On the other hand, the NWPC has the power to review regional wage levels set by the RTWPBs to determine if these are in accordance with prescribed guidelines and national development funds. (*Articles 120-127, Labor Code*).

**JURISDICTION OVER CLAIMS FOR SOCIAL SECURITY BENEFITS**

**34. What agencies of government administer social security programs?**

- The Social Security System (SSS) for the *private* sector employees and the Government Service Insurance System (GSIS) for the *public* sector employees are the agencies which administer the income benefits of the social insurance programs of the government.
- The SSS and the GSIS likewise administer either the employees' compensation program which grants income benefits, medical and related benefits in cases of work-related illnesses, injuries and deaths.
- The Philippine Health Insurance Corporation has taken over the administration of the Medicare benefits which are now also in the hands of the SSS and the GSIS.

**JURISDICTION OVER CRIMINAL AND CIVIL LIABILITIES**

**35. Which has jurisdiction over criminal and civil aspects of labor cases?**

By express provision of Article 241 of the Labor Code, both *criminal* and *civil* liabilities arising from violations of the rights and conditions of membership in a labor organization enumerated in said Article, shall continue to be under the jurisdiction of ordinary courts.

This provision should be distinguished from Article 247 of the Labor Code which vests jurisdiction upon the Labor Arbiters, over the civil aspects, including damages, attorney's fees and other affirmative relief, of unfair labor practices cases. (*Article 247, Labor Code*).

Other provisions of the Labor Code which vest jurisdiction in the regular courts over the criminal aspect of cases are Articles 272 and 288.

## APPEALS

**36. What are the modes of appeal from the decisions of the various labor tribunals?**

1. **DECISION OF LABOR ARBITERS:** Appeal from the decision of the Labor Arbiter is brought by ordinary appeal to the NLRC within ten (10) calendar days from receipt by the party of the decision. From the decision of the NLRC, there is no appeal. The only way to elevate the case to the Court of Appeals is by way of the special civil action of certiorari under Rule 65 of the Rules of Civil Procedure. From the ruling of the Court of the Appeals, it may be elevated to the Supreme Court by way of ordinary appeal under Rule 45 of the Rules of Civil Procedure. (*St. Martin Funeral Home vs. NLRC, et al., G. R. No. 130866, September 16, 1998*).
2. **DECISION OF VOLUNTARY ARBITRATORS:** The decision of a Voluntary Arbitrator or panel of Voluntary Arbitrators is appealable by ordinary appeal under Rule 43 of the Rules of Civil Procedure directly to the Court of Appeals. From the

Court of Appeals, the case may be elevated to the Supreme Court by way of ordinary appeal under the same Rule 45. (*Luzon Development Bank vs. Association of Luzon Development Bank Employees, et al.*, G. R. No. 120319, October 6, 1995).

3. **DECISION OF THE BLR: A. Denial of application for registration of a union.** If the denial is issued by the Regional Office, it may be appealed to the BLR. If the denial is originally made by the BLR, appeal may be had to the Secretary of Labor and Employment. **B. Cancellation of registration of a union.** If the cancellation of union registration is ordered by the Regional Office, the same may be appealed to the BLR. If the cancellation is done by the BLR in a petition filed directly therewith, the BLR's decision is appealable to the Secretary of Labor and Employment by ordinary appeal.

The decision of the BLR rendered in its *original* jurisdiction may be appealed to the Secretary of Labor and Employment whose decision thereon may only be elevated to the Court of Appeals by way of certiorari under Rule 65.

The decision of the BLR rendered in its *appellate* jurisdiction may not be appealed to the Secretary of Labor and Employment but may be elevated directly to the Court of Appeals by way of certiorari under Rule 65. (*Abbott Laboratories Philippines, Inc. vs. Abbott Laboratories Employees Union, et al.*, G. R. No. 131374, January 26, 2000).

4. **DECISION OF THE MED-ARBITER IN CERTIFICATION ELECTION CASES** – The decision is appealable to the DOLE Secretary of Labor and Employment.
5. **DECISION OF THE DOLE REGIONAL DIRECTORS OR HIS DULY AUTHORIZED HEARING OFFICERS UNDER ARTICLE 129 INVOLVING RECOVERY OF WAGES, SIMPLE MONEY CLAIMS AND OTHER BENEFITS NOT EXCEEDING P5,000 AND NOT ACCOMPANIED BY CLAIM FOR REINSTATEMENT** - The decision is appealable to the NLRC and not to the DOLE Secretary.

(NOTE: Appeal from CA to SC should be under Rule 45 (Petition for Review on Certiorari) and not Rule 65 (Special Civil Action for Certiorari) – SEA POWER SHIPPING ENTERPRISES, INC. VS. COURT OF APPEALS, ET AL., G. R. NO. 138270, JUNE 28, 2001)

### **APPEAL TO THE NLRC FROM DECISIONS OF LABOR ARBITERS**

#### ***37. What are the grounds for appeal?***

There are four (4) grounds, to wit:

- (a) If there is *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter;
- (b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;
- (c) If made purely on questions of law; and
- (d) If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellants.

#### ***38. What are the requisites for perfection of appeal?***

##### ***Requisites for perfection of appeal.***

- a. the appeal should be filed within the reglementary period;
- b. the Memorandum of Appeal should be under oath;
- c. payment of appeal fee;
- d. posting of cash or surety bond, if *judgment involves monetary award*; and
- e. proof of service to the adverse party.

#### ***39. What is the reglementary period to perfect the appeal?***

The reglementary period is ten (10) calendar days.

- a. Saturdays, Sundays and Legal Holidays included in reckoning 10-day reglementary period.
- b. Exceptions to 10-calendar day period rule.
  1. Appeal filed before the Vir-Jen case (G. R. Nos. 58011-12, July 20, 1982) at a time when the rule was 10 *working* days.
  2. 10<sup>th</sup> day falling on a Saturday.
  3. 10<sup>th</sup> day falling on a Sunday or holiday.
  - d. Reliance on erroneous notice of decision.
  4. Appeal from decision of Labor Arbiter on third-party claim (10 **working** days).
  5. Appeal from decision of Labor Arbiter in direct contempt cases (5 calendar days).
  6. When allowing the appeal "in the interest of justice."
  7. Allowing the appeal for other compelling reasons (due to typhoon falling on the 10<sup>th</sup> day; or excusable negligence).
- c. The 10-calendar day reglementary period to appeal is not extendible.
- d. Motion for reconsideration of Labor Arbiter's decision is not allowed.
- e. 10 calendar-day period is counted from receipt of decision by counsel of party.
- f. Failure to appeal or perfect appeal within 10-calendar day reglementary period will make the Labor Arbiter's decision final and executory.
- g. Date of mailing (by registered mail) is date of filing.
- h. Receipt by one of two counsels is receipt by the party.
- i. Effect of perfection of appeal - Labor Arbiter loses jurisdiction.
- j. Lack of verification of the memorandum of appeal is not fatal nor jurisdictional.
- k. Failure to pay appeal docketing fee, not fatal to the validity of appeal.
- l. Submission of new or additional evidence on appeal may be allowed.
- m. Raising new issues or changing theory on appeal is not allowed.

#### **40. What is the reinstatement aspect of the Labor Arbiter's decision?**

If reinstatement is ordered by the Labor Arbiter in an illegal dismissal case, it is *immediately executory even pending appeal*. Such award does not require a writ of execution. In the case of **Pioneer Texturizing Corporation vs. NLRC, et al.**, 280 SCRA 806 [1997], it is the employer who is duty-bound to inform employee of the reinstatement (either in the payroll or in the position previously held or in a substantially equivalent position if no longer available, *at the option of the employer*). The employee ordered reinstated need not secure a writ of execution from the Labor Arbiter. If employer refuses to reinstate, the employee may file a motion to cite the former in **contempt**. The posting of bond does **not** stay reinstatement.

#### **Options of the employer.**

The employer is practically left with no effective contra-remedy that may forestall or stay the execution of a Labor Arbiter's order for immediate reinstatement pending appeal. All that the employer has is to avail of any of the following options:

1. actual reinstatement of the employee to his work under the same terms and conditions prevailing prior to his dismissal or separation; or
2. reinstatement of the employee in the payroll of the company, without requiring him to report back to his work. (*Article 223, Labor Code; Zamboanga City Water District vs. Buat*, 232 SCRA 587).

#### **Employer has to notify employee of his choice of option.**

Having ruled in *Pioneer Texturizing* [supra] that henceforth, an award or order for reinstatement under Article 223 is self-executory, the Supreme Court prescribes the procedure to be followed, thus:

“After receipt of the decision or resolution ordering the employee’s reinstatement, the employer has the right to choose whether to re-admit the employee to work under the same terms and conditions prevailing prior to his dismissal or to reinstate the employee in the payroll. *In either instance, the employer has to inform the employee of his choice.* The notification is based on practical considerations for without notice, the employee has no way of knowing if he has to report for work or not.” [Underscoring supplied]

***Failure to exercise option, employer should pay salary.***

Failing to exercise any of the options, the employer can be compelled, under pain of contempt, to pay instead the salary of the employee. The employee should not be left without any remedy in case the employer unreasonably delays reinstatement. The unjustified refusal of the employer to reinstate an illegally dismissed employee entitles the employee to payment of his salaries. (*Pioneer Texturizing Corporation vs. NLRC, supra*).

The entitlement of the dismissed employee to his salaries occasioned by the unjustified refusal of the employer to reinstate him becomes effective from the time the employer failed to reinstate him despite the issuance of a writ of execution. (*Roquero vs. Philippine Air Lines, Inc., supra*).

***Remedy in case of employer’s refusal to comply with writ of execution to reinstate is contempt citation.***

If despite several writs of execution, the employer still refuses to reinstate the employee, the remedy is not the grant of additional backwages to serve as damages but to file a motion to cite the employer for contempt. (*Christian Literature Crusade vs. NLRC, 171 SCRA 712, April 10, 1989; See also Industrial and Transport Equipment, Inc. vs. NLRC, G. R. No. 113592, Jan. 15, 1998*).

***Employer must pay for the salary of employee, as if he was reinstated.***

In the 2003 case of **Roquero vs. Philippine Air Lines, Inc.**, [G. R. No. 152329, April 22, 2003], the dismissal of the employee was held valid by the Labor Arbiter. On appeal to the NLRC, the Labor Arbiter’s decision was reversed and consequently, the dismissed employee was ordered reinstated. The employee did not appeal from that decision of the NLRC but filed a motion for a writ of execution of the order of reinstatement. The Labor Arbiter granted the motion but the employer refused to execute the said order on the ground that it has filed a Petition for Review before the Supreme Court. The case was remanded later from the Supreme Court to the Court of Appeals pursuant to the ruling in *St. Martin Funeral Home vs. NLRC and Bienvenido Aricayos*, [G.R. No. 130866, September 16, 1998]. The Court of Appeals reversed the ruling of the NLRC but, on appeal to the Supreme Court, the dismissal of the employee was held valid.

What, if any, was the legal consequence of the reinstatement order issued by the NLRC which was never complied with by the employer all throughout the pendency of the case on appeal up to the Supreme Court? Did the subsequent affirmance by the Supreme Court of the validity of the dismissal have the effect of exonerating the non-complying employer from his obligation to pay for the salary of the employee consequent to the reinstatement-pending-appeal order issued by the NLRC?

The Supreme Court said that the employer is liable to pay for the salary of the employee previously ordered reinstated by the NLRC although later on, the dismissal of the employee was held not to be illegal.

***Reinstatement in case of two successive dismissals.***

In **Sevilla vs. NLRC**, [G. R. No. 108878, Sept. 20, 1994], a case involving two (2) successive dismissals, it was held that the order of reinstatement pending appeal under Article 223 issued in the first case, shall apply only to the first case and shall not affect the second dismissal. The Labor Arbiter was correct in denying the third motion for reinstatement filed by the petitioner (employee) because what she should have filed was a new complaint based on the

second dismissal. The second dismissal gave rise to a new cause of action. Inasmuch as no new complaint was filed, the Labor Arbiter could not have ruled on the legality of the second dismissal.

***Reinstatement when position already filled up.***

If the former position is already filled up, the employee ordered reinstated under Article 223 should be admitted back to work in a *substantially equivalent position*. (*Medina vs. Consolidated Broadcasting System [CBS]-DZWX*, 222 SCRA 707; *Pedroso vs. Castro*, 141 SCRA 252 [1986]).

**41. What are the rules in case of appeal involving monetary award?**

The following basic principles are worth mentioning:

- a. No monetary award, no appeal bond required.
- b. Labor Arbiter's decision or order is required to state the amount awarded. If the amount of the monetary award is not included in the judgment, the appeal bond equivalent to the amount of the monetary award is not required to be posted. (*Orozco vs. The Fifth Division of the Honorable Court of Appeals*, [G. R. No. 155207, April 29, 2005])
- c. Cash, property or surety bond is required for perfection of appeal from monetary award. The surety bond should be issued by an accredited surety company.
- d. Bond should be posted within the 10-calendar day reglementary period.
- e. *Award of moral and exemplary damages and attorney's fees, excluded from computation of bond.*
- f. If bond is not genuine, appeal is not perfected.
- g. Non-posting of bond will not perfect the appeal.
- h. Remedy of employee in case employer failed to post bond is to file a motion to dismiss the appeal.

**42. May a Motion to Reduce Bond be filed?**

1. Motion to reduce bond may be granted only in meritorious cases such as when the monetary claims have already prescribed.
2. The filing of a motion to reduce bond does not stop the running of the period to perfect appeal. In order to effectively stop the running of the period within which to perfect the appeal, the motion to reduce bond must comply with the requisites that:
  1. it should be filed within the reglementary period;
  2. it should be based on meritorious grounds; and
  3. *a reasonable amount of bond in relation to the monetary award should be posted together with said motion.*

***The failure to post the bond must be caused by a third party, not by the appellant himself.***

In **Mary Abigail's Food Services, Inc. vs. CA**, G. R. No. 140294, May 9, 2005, it was held that in the cases where delayed payment of the bond was allowed, the failure to pay was due to the excusable oversight or error of a third party, that is, the failure of the Labor Arbiter to state in the decision the exact amount awarded and the inclusion of the bond as a requisite for perfecting an appeal..

But, this rule will not apply, according to **Santos vs. Velarde**, [G. R. No. 140753, April 30, 2003], if the petitioner's failure to post a bond was due to his own negligent and mistaken belief that he was exempt, especially if the Labor Arbiter's decision states the exact monetary awards to be paid and there is nothing in the decision which could have given the petitioner the impression that the bond was not necessary or that he was excused from paying it.

Moreover, in the case of **Quiambao vs. NLRC**, [G. R. No. 91935, March 4, 1996, 254 SCRA 211], the Supreme Court pointed out that, in the cases where belated posting of a bond was allowed, there was substantial compliance with the rule. Thus, technical considerations had to

give way to considerations of equity and justice. The eventual posting of the bond cannot be considered as substantial compliance warranting the relaxation of the rules in the interest of justice.

In the instances where the Supreme Court acknowledged substantial compliance, the appellants, at the very least, exhibited willingness to pay by posting a partial bond (*See Teofilo Gensoli & Co. vs. NLRC*, 289 SCRA 407 [1998]) or by filing a motion for reduction of bond (*See Rosewood Processing Inc. vs. NLRC*, 290 SCRA 408 [1998]; also *Star Angel Handicraft vs. NLRC*, 236 SCRA 580 [1994]) within the 10-day period provided by law. If there is no such willingness exhibited by petitioner and his failure to pay the bond was due simply to his own mistaken conclusion that he was exempt from paying because he was not the employer of the respondent-employees and thus was not liable to them, such is a reckless conclusion since there was no circumstance which would have warranted such a belief.

Furthermore, the Supreme Court has allowed tardy appeals in judicious cases, *e.g.*, where the presence of any justifying circumstance recognized by law, such as fraud, accident, mistake or excusable negligence, properly vested the judge with discretion to approve or admit an appeal filed out of time; or where on equitable grounds, a belated appeal was allowed as the questioned decision was served directly upon petitioner instead of her counsel of record who at the time was already dead. (*Catubay vs. NLRC*, G. R. No. 119289, April 12, 2000; *Kathy - O Enterprises vs. NLRC*, 286 SCRA 729 [1998]).

***Motion to reduce bond, when not proper.***

In the case of **Ong vs. Court of Appeals**, [G. R. No. 152494, September 22, 2004], the petitioner filed his memorandum of appeal and paid the corresponding appeal fees on the last day for filing the appeal. However, in lieu of the required cash or surety bond, he filed a motion to reduce bond alleging that the amount of ₱1,427,802.04 as bond is “*unjustified and prohibitive*” and prayed that the same be reduced to a “*reasonable level*.” The NLRC denied the motion and consequently dismissed the appeal for non-perfection. Petitioner contends that he was deprived of the chance to post bond because the NLRC took 102 days to decide his motion.

In holding that the petitioner’s argument is unavailing, the Supreme Court declared that while *Section 6, Rule VI* of the *NLRC New Rules of Procedure* allows the Commission to reduce the amount of the bond, the exercise of that authority is not a matter of right on the part of the movant but lies within the sound discretion of the NLRC upon showing of meritorious grounds. After careful scrutiny of the motion to reduce appeal bond, the Supreme Court agreed with the Court of Appeals that the NLRC did not act with grave abuse of discretion when it denied petitioner’s motion for the same failed to either elucidate why the amount of the bond was “*unjustified and prohibitive*” or to indicate what would be a “*reasonable level*.”

Even granting *arguendo* that petitioner has meritorious grounds to reduce the appeal bond, the result would have been the same since he failed to post cash or surety bond within the prescribed period. The fact that the NLRC took 102 days to resolve the motion will not help petitioner’s case. The *NLRC Rules* clearly provide that “*the filing of the motion to reduce bond shall not stop the running of the period to perfect appeal*.” Petitioner should have seasonably filed the appeal bond within the ten-day reglementary period following the receipt of the order, resolution or decision of the NLRC to forestall the finality of such order, resolution or decision.

In **Calabash Garments, Inc. vs. NLRC**, [G. R. No. 110827, August 8, 1996, 260 SCRA 441; 329 Phil. 226, 235 (1996)], it was held that “a substantial monetary award, even if it runs into millions, does not necessarily give the employer-appellant a ‘*meritorious case*’ and does not automatically warrant a reduction of the appeal bond.”

***Alternative remedy is to pay partial appeal bond while motion to reduce bond is pending with the NLRC.***

In the 1998 case of **Rosewood Processing, Inc. vs. NLRC**, [352 Phil. 1013 (1998)], the petitioner was declared to have substantially complied with the rules by posting a partial surety bond of fifty thousand pesos issued by Prudential Guarantee and Assurance, Inc. while its motion to reduce appeal bond was pending before the NLRC.

In the 2004 case of *Ong* [supra], the Supreme Court suggested as an alternative remedy to the full payment of the monetary award, the payment only of a moderate and reasonable sum for the premium, as was held in *Biogenerics Marketing and Research Corporation vs. NLRC*, [G. R. No. 122725, September 8, 1999; 372 Phil. 653, 661 (1999)].

But the petitioner in *Ong* did not post a full or partial appeal bond within the prescribed period, thus, no appeal was perfected from the decision of the Labor Arbiter. For this reason, the decision sought to be appealed to the NLRC had become final and executory and, therefore, immutable. Clearly then, the NLRC has no authority to entertain the appeal, much less to reverse the decision of the Labor Arbiter. Any amendment or alteration made which substantially affects the final and executory judgment is null and void for lack of jurisdiction, including the entire proceeding held for that purpose.

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. (*See also Teofilo Gensoli & Co. vs. NLRC*, 352 Phil. 232, 239 [1998]).

***The partial payment of bond must be made during the reglementary period.***

In *Filipinas [Pre-fabricated Bldg.] Systems ‘Filsystems,’ Inc. vs. NLRC*, (G. R. No. 153859, Dec. 11, 2003), it was held that the partial payment of the bond, in order to forestall the decision of the Labor Arbiter from becoming final and executory, should be made within the reglementary period. The late filing of the bond divests the NLRC of its jurisdiction to entertain the appeal since the decision of the Labor Arbiter has already become final and executory with the lapse of the reglementary period. .

***Improper granting of motion to reduce bond.***

In *Times Transportation Company, Inc. vs. Sotelo*, [G. R. No. 163786, February 16, 2005], the appellants’ motion to reduce bond was denied and the NLRC ordered them to post the required amount *within an unextendible period of ten (10) days*. However, instead of complying with the directive, appellants filed another motion for reconsideration of the order of denial. Several weeks later, appellants posted an additional bond, which was still less than the required amount. Three (3) months after the filing of the motion for reconsideration, the NLRC reversed its previous order and granted the motion for reduction of bond. Said the High Court:

“We agree with the Court of Appeals that the foregoing constitutes grave abuse of discretion on the part of the NLRC. By delaying the resolution of appellants’ motion for reconsideration, it has unnecessarily prolonged the period of appeal. We have held that to extend the period of appeal is to prolong the resolution of the case, a circumstance which would give the employer the opportunity to wear out the energy and meager resources of the workers to the point that they would be constrained to give up for less than what they deserve in law.” (*See also Globe General Services and Security Agency vs. NLRC*, 319 Phil. 531, 537 [1995]).

***Effect when NLRC grants additional time to post bond after denial of motion to reduce bond.***

In *Buenaobra vs. Lim King Guan*, [G. R. No. 150147, January 20, 2004], the Supreme Court did not consider as grave abuse of discretion the act of the NLRC in granting to the appellant-employer “*an unextendible period of ten (10) days*” upon receipt of the order denying the motion to exempt from filing appeal bond, within which to post cash or surety bond. In this case, the cash or surety bond was actually posted four (4) months after the filing of their memorandum on appeal. The Supreme Court reasoned that if only to achieve substantial justice, strict observance of the reglementary periods may be relaxed if warranted. The NLRC could not be said to have abused its discretion in requiring the posting of bond after it denied private respondents’ motion to be exempted therefrom.

***Financial difficulties, not sufficient ground.***

An appellant cannot invoke financial difficulties as a ground in support of a Motion to Reduce Bond. Suffice it to say that the law does not require outright payment of the total monetary award, but only the posting of a bond to ensure that the award will be eventually paid should the appeal fail. What appellant has to pay is a moderate and reasonable sum for the premium for such bond. (*Times Transportation Company, Inc. vs. Sotelo, supra citing Biogenics Marketing and Research Corporation vs. NLRC, 372 Phil. 653, 661 [1999]*).

***Long Christmas holiday, not an excuse.***

In **Mary Abigail's Food Services, Inc. vs. CA**, [G. R. No. 140294, May 9, 2005], the reason given by the petitioners to justify their late posting of the bond, *i.e.*, that it was impossible to secure the required bond and file it within the ten-day reglementary period because after receiving a copy of the decision of the Labor Arbiter on December 23, 1998, a long holiday (Christmas) season followed, was considered simply unacceptable by the Supreme Court. Surely, the occurrence of the holiday season did not at all make impossible petitioners' fulfillment of their responsibility to post the required bond. Pursuing petitioners' excuse, no bond would ever be posted on time whenever the reglementary period to file the same falls on such a season.

## UNFAIR LABOR PRACTICES

**43. What is the concept of unfair labor practice?**

An unfair labor practice act violates the **right of workers to self-organization**, is inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupts industrial peace and hinders the promotion of healthy and stable labor-management relations.

**44. What are the aspects of unfair labor practice?**

There are *two (2) aspects*, namely: **(1) Civil**; and **(2) Criminal**.

Labor Arbiters shall have jurisdiction over the *civil* aspect of all cases involving unfair labor practices, which may include claims for actual, moral, exemplary and other forms of damages, attorney's fees and other affirmative relief.

Recovery of civil liability in the administrative proceedings shall bar recovery under the Civil Code. No criminal prosecution may be instituted without a final judgment finding that an unfair labor practice was committed having been first obtained in the labor case.

**45. Name the parties which may commit unfair labor practice.**

Parties who may commit ULP.

- (1) Employer (*Article 248, Labor Code*); and
- (2) Labor Organization (*Article 249, Labor Code*).

**46. What are the elements of ULP?**

Before an employer or labor organization, as the case may be, may be said to have committed unfair labor practices acts, the following ingredients must **both** concur:

1. there should exist an employer-employee relationship between the offended party and the offender; and
2. the act complained of must be **expressly** mentioned and defined in the Labor Code as constitutive of unfair labor practice. If not mentioned, there is no ULP.

Absent one of the elements above will not make the act an unfair labor practice act.

**47. What are the ULPs of the employer?**

- (a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;
- (b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs (*a.k.a.* **YELLOW DOG CONTRACT**);
- (c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization; [**Note: The act of an employer in having work or certain services or functions being performed by union members contracted out is not generally an unfair labor practice act. It is only when the contracting out of a job, work or service being performed by union members will interfere with, restrain or coerce employees in the exercise of their right to self-organization that it shall be unlawful and shall constitute unfair labor practice. (Article 248 [c], Labor Code; Section 6 [ff], Department Order No. 18-02, Series of 2002, [Feb. 21, 2002])**].
- (d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or supporters (*a.k.a.* **COMPANY UNION**);
- (e) To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees of an appropriate bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement: Provided, that the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent;
- (f) To dismiss, discharge or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code;
- (g) To violate the duty to bargain collectively as prescribed by this Code;
- (h) To pay negotiation or attorney's fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or
- (i) To violate a collective bargaining agreement (**but only if gross in character**).

**48. Who may be held criminally liable for ULPs of employer?**

On the part of the **employer**, only the officers and agents of corporations, associations or partnerships who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable.

**49. What are the ULPs of labor organizations?**

- (a) To restrain or coerce employees in the exercise of their right to self-organization. However, a labor organization shall have the right to prescribe its own rules with respect to the acquisition or retention of membership;
- (b) To cause or attempt to cause an employer to discriminate against an employee, including discrimination against an employee with respect to whom membership in such organization has been denied or to terminate an employee on any ground other than the usual terms and conditions under which membership or continuation of membership is made available to other members;
- (c) To violate the duty, or refuse to bargain collectively with the employer, provided it is the representative of the employees;
- (d) To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other things of value, in the nature of an exaction, for services which are not performed or not to be performed, including the demand for fee for union negotiations (*a.k.a.* **FEATHER-BEDDING**);
- (e) To ask for or accept negotiation or attorney's fees from employers as part of the settlement of any issue in collective bargaining or any other dispute; or

- (f) To violate a collective bargaining agreement. **(but only if gross in character).**

**50. Who may be held criminally liable for ULPs of a labor organization?**

On the part of the **union**, only the officers, members of governing boards, representatives or agents or members of labor associations or organizations who have actually participated in, authorized or ratified the unfair labor practices shall be held criminally liable.

**51. What is totality of conduct doctrine?**

The **“totality of conduct doctrine”** means that expressions of opinion by an employer, though innocent in themselves, may be held to be constitutive of unfair labor practice because of the circumstances under which they were uttered, the history of the particular employer’s labor relations or anti-union bias or because of their connection with an established collateral plan of coercion or interference. An expression which might be permissibly uttered by one employer, might, in the mouth of a more hostile employer, be deemed improper and consequently actionable as an unfair labor practice.

**52. What is “yellow-dog contract”?**

A **“yellow dog contract”** is an agreement which exacts from workers as a condition of employment, that they shall not join or belong to a labor organization, or attempt to organize one, during their period of employment or that they shall withdraw therefrom, in case they are already members of a labor organization.

The typical yellow dog contract embodies the following stipulations:

1. a representation by the employee that he is not a member of a labor organization;
2. a promise by the employee that he will not join a union; and
3. a promise by the employee that upon joining a labor organization, he will quit his employment.

**53. What is “union security clause”?**

A **“union security clause”** is a stipulation in the CBA whereby the management recognizes that the membership of employees in the union which negotiated said agreement should be maintained and continued as a condition for employment or retention of employment. The obvious purpose is to safeguard and ensure the continued existence of the union.

**54. What are the types of union security clause?**

**Classification.** - (1) Closed shop agreement; (2) Maintenance of membership agreement; (3) Union shop agreement; (4) Modified union shop agreement; (5) Exclusive bargaining agreement; (6) Bargaining for members only agreement; (7) Agency shop agreement; (8) Preferential hiring agreement.

**55. What are the legal principles pertinent to union security clause arrangements?**

***To validly dismiss an employee based on violation of union security clause, employer should still afford due process to the expelled unionists.***

Although the Supreme Court has ruled that union security clauses embodied in the CBA may be validly enforced and that dismissals pursuant thereto may likewise be valid, this does not erode the fundamental requirement of due process. The reason behind the enforcement of union security clauses which is the sanctity and inviolability of contracts, cannot override one’s right to due process.

In the case of **Cariño vs. NLRC**, [G. R. No. 91086, May 8, 1990, 185 SCRA 177], the Supreme Court pronounced that while the company, under a maintenance of membership provision of the CBA, is bound to dismiss any employee expelled by the union for disloyalty upon its written request, this undertaking should not be done hastily and summarily. The company acts in bad faith in dismissing a worker without giving him the benefit of a hearing. The right of an employee to be informed of the charges against him and to a reasonable opportunity to

present his side in a controversy with either the company or his own union is not wiped away by a union security clause or a union shop clause in a CBA. An employee is entitled to be protected not only from a company which disregards his rights but also from his own union the leadership of which could yield to the temptation of swift and arbitrary expulsion from membership and mere dismissal from his job.

In **Malayang Samahan ng mga Manggagawa sa M. Greenfield (MSMG-UWP) vs. Ramos**, [G. R. No. 113907, February 28, 2000], petitioner union officers were expelled by the federation for allegedly committing acts of disloyalty and/or inimical to the interest of the federation (ULGWP) and in violation of the Constitution and By-laws. Upon demand of the federation, the company terminated the petitioners without conducting a separate and independent investigation. Respondent company did not inquire into the cause of the expulsion and whether or not the federation had sufficient grounds to effect the same. Relying merely upon the federation's allegations, respondent company terminated petitioners from employment when a separate inquiry could have revealed if the federation had acted arbitrarily and capriciously in expelling the union officers. Respondent company's allegation that petitioners were accorded due process is belied by the termination letters received by the petitioners which state that the dismissal shall be *immediately* effective.

Before dismissal may be effected by the employer for breach of a union security agreement, due process must be observed by the employer. The employee sought to be dismissed must be given the opportunity to be heard. The employer should not rely solely upon the request of the union. (*Liberty Cotton Mills Workers Union vs. Liberty Cotton Mills*, 90 SCRA 391; *Binalbagan-Isabela Sugar Co., Inc. [BISCOM] vs. Philippine Association of Free Labor Unions [PAFLU]*, G. R. No. L-18782, Aug. 29, 1953, 8 SCRA 700; *Sanyo Philippines Workers Union – PSSLU vs. Canizares*, 211 SCRA 361).

***Employer's liability in illegal dismissal based on union security clause.***

The company is liable for the payment of backwages for having acted in bad faith in effecting the dismissal of the employees. (*Liberty Cotton Mills Workers Union vs. Liberty Cotton Mills*, 90 SCRA 391).

Thus, as held in the 2000 case of **M. Greenfield** [supra], notwithstanding the fact that the dismissal was at the instance of the federation and that it undertook to hold the company free from any liability resulting from such a dismissal, the company may still be held liable if it was remiss in its duty to accord the would-be dismissed employees their right to be heard on the matter.

***Effect of Union Security Clause on religious freedom.***

An employee may not be compelled to join a union if it is based on religious objection.

In 1988, the Supreme Court rendered a decision in the case of *Kapatiran sa Meat and Canning Division [Tupas Local Chapter No. 1027] vs. The Honorable BLR Director Pura Ferrer-Calleja*, [G. R. No. L-82914, June 20, 1988] where it ruled that the decision in *Benjamin Victoriano vs. Elizalde Rope Workers' Union*, [G. R. No. L-25246, September 12, 1974] upholding the right of members of the *Iglesia ni Kristo* sect not to join a labor union for being contrary to their religious beliefs, does not bar the members of that sect from forming their own union. The public respondent correctly observed that the "recognition of the tenets of the sect xxx should not infringe on the basic right of self-organization granted by the constitution to workers, regardless of religious affiliation."

In 1992, the Supreme Court, in the case of *Alexander Reyes vs. Cresenciano B. Trajano*, [G. R. No. 84433, June 2, 1992], ruled on the issue of whether members of the *Iglesia ni Kristo* may be allowed to vote in a certification election. Considering that they are not members of any union and they refused to participate in the previous certification election, the respondents' argument that petitioners are disqualified to vote because they are not constituted into a duly organized labor union but members of the *Iglesia ni Kristo* which prohibits its followers, on religious grounds, from joining or forming any labor organization, and "hence, not one of the unions which vied for certification as sole and exclusive bargaining representative," is specious. Neither law, administrative rule nor jurisprudence requires that only employees affiliated with

any labor organization may take part in a certification election. On the contrary, the plainly discernible intent of the law is to grant the right to vote to all *bona-fide* employees in the bargaining unit, whether they are members of a labor organization or not, as held in *Airtime Specialists, Inc. vs. Ferrer-Calleja*, [180 SCRA 749].

Neither does the contention that petitioners should be denied the right to vote because they “did not participate in previous certification elections in the company for the reason that their religious beliefs do not allow them to form, join or assist labor organizations,” persuade acceptance. No law, administrative rule or precedent prescribes forfeiture of the right to vote by reason of neglect to exercise the right in past certification elections. (*Ibid.*).

**56. What is agency fee (check-off from non-union members)?**

The dues and other fees that may be assessed from non-union members within the bargaining unit who accept and avail of the benefits flowing from the CBA are called “agency fees.” Payment of agency fee to the bargaining union/agent which negotiated the CBA is but a reasonable requirement recognized by law, to prevent non-union members from enriching themselves at the expense of union members. (*See Article 248 [e], Labor Code; Section 4, Rule XXV, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-03, Series of 2003, [Feb. 17, 2003]*).

It must be emphasized that non-members of the certified bargaining agent which successfully concluded the CBA are not required to become members of the latter. Their acceptance of the benefits flowing from the CBA and their act of paying the agency fee does not make them members thereof.

**57. What is a runaway shop?**

A “runaway shop” is an industrial plant moved by its owners from one location to another to escape union labor regulations or state laws. It may also be a relocation motivated by anti-union *animus* rather than for business reasons.

**58. What is “feather-bedding”?**

According to this doctrine, it shall be unfair labor practice for a labor organization, its officers, agents or representatives to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other things of value, in the nature of an exaction, for services which are not performed or not to be performed, including the demand for fee for union negotiations.

**59. What are the CBA-related ULPs under the law?**

In connection with the right of workers to collective bargaining, it is unfair labor practice of the employer:

1. to violate the duty to bargain collectively as prescribed in the Labor Code (*Article 248 [g], Labor Code*);
2. to pay negotiation or attorney’s fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute (*Article 248 [h], Ibid.*). No attorney’s fees, negotiation fees or similar charges of any kind arising from any CBA shall be imposed on any individual member of the contracting union. Attorney’s fees, however, may be charged against union funds in an amount to be agreed upon by the parties. Any contract, agreement or arrangement of any sort to the contrary shall be null and void. (*Article 222 [b], Labor Code; Pacific Banking Corporation vs. Clave, 128 SCRA 112; Galvadores vs. Trajano, 144 SCRA 138; Amalgamated Laborers Association vs. CIR, 22 SCRA 1266*).

On the part of the union, asking for or accepting attorney’s fees or negotiation fee from employers is a ground for cancellation of union registration. (*Article 239 [g], Labor Code*).

3. to violate a collective bargaining agreement. (*Article 248 [i], Ibid.*). Violation of the CBA is ULP only if **gross** in character which means flagrant and/or malicious refusal to comply with the economic provisions thereof. **If not gross**, violation of the CBA is no longer considered ULP.

The act of the employer in refusing to comply with the terms and conditions of a CBA constitutes bargaining in bad faith and is considered an unfair labor practice. (*National Development Co., vs. NDC Employees and Workers Union, 66 SCRA 181; Oceanic Pharmacal Employees Union vs. Inciong, G. R. No. L-50568, Nov. 7, 1979, 94 SCRA 270*).

The act of the employer in refusing to implement the negotiated wage increase stipulated in the CBA, which increase is intended to be distinct and separate from any other benefits or privileges that may be forthcoming to the employees, is unfair labor practice. (*Philippine Apparel Workers Union vs. NLRC, G. R. No. L-50320, July 31, 1981; Alhambra Industries, Inc. vs. CIR, 35 SCRA 550*).

Refusal for a considerable number of years, to give salary adjustments according to the improved salary scales in the collective bargaining agreements, is unfair labor practice. (*Benguet Consolidated vs. BCI Employees and Workers Union, 22 SCRA 1293*).

The act of the employer to permit non-union members to participate in the service charges, contrary to the stipulation in the CBA, is unfair labor practice. (*Alba Patio de Makati, vs. Alba Patio de Makati Employees Association, G. R. No. L-37922, March 16, 1984*).

#### **ILLUSTRATIVE CASES INVOLVING UNFAIR LABOR PRACTICES OF EMPLOYERS.**

The following acts of the employer were generally held as unfair labor practice acts:

1. The employer's act of notifying through letters, absent employees individually during a strike following unproductive efforts at collective bargaining that the plant would be operated the next day and their jobs were open for them should they want to return to work, has been held to be an unfair labor practice, as an active interference with the right of collective bargaining through dealing with the employees individually instead of through their collective bargaining representatives. (*Insular Life Assurance Co., Ltd., Employees Association-NATU, vs. Insular Life Assurance Co., Ltd., G. R. No. L-25291, Jan. 30, 1971, 37 SCRA 244*).

2. Offer of reinstatement and attempt to "bribe" the strikers with "comfortable cots," "free coffee and occasional movies," "overtime pay" for work performed in excess of eight hours and "arrangements" for their families, so they would abandon the strike and return to work, constitute strike-breaking and union-busting which is unfair labor practice. (*Ibid.*).

3. Offer of a Christmas bonus to all "loyal" employees of a company shortly after the making of a request by the union to bargain; wage increase given for the purpose of mollifying employees after the employer has refused to bargain with the union, or to induce strikers to return to work; employer's promise of benefits in return for the striking employees' abandonment of their strike; and the employer's statement, made about six (6) weeks after the strike started, to a group of strikers in a restaurant that if the strikers returned to work, new benefits such as hospitalization, accident insurance, profit-sharing and a new building to work in, will be given to them. (*Ibid.*).

4. The act of the employer in indirectly forcing its employees to join another union. (*Macleod vs. Progressive Federation of Labor, 97 Phil. 205*).

5. The act of the employer in instructing an employee not to affiliate or join a union. (*Visayan Stevedores vs. CIR, 19 SCRA 426; National Fastener Corporation vs. CIR, 1 SCRA 17*).

6. The act of the employer in interrogating its employees in connection with their membership in the union or their union activities, which hampers their exercise of free choice. (*Scoty's Department Store vs. Micaller, 99 Phil. 762; Philippine Steam Navigation Co. vs. Philippine Marine Officers Guild, 15 SCRA 174*).

7. The act of the employer in asking the union's recruiter to surrender the union affiliation forms and threatening him with bodily harm. (*Velez vs. PAV Watchmen's Union, 107 Phil. 689*).

8. Withdrawal by the employer of holiday pay benefits stipulated under a supplementary agreement with the union. (*Oceanic Pharmacal Employees Union vs. Inciong*, G. R. No. L-50568, Nov. 7, 1979).

9. The act of the employer in refusing to reinstate strikers who voluntarily and unconditionally offered to return to work but did not accept the new discriminatory conditions imposed against them because of their union membership or activities. (*Cromwell Commercial Employees and Laborers Union vs. CIR*, G. R. No. L-19778, Sept. 30, 1964).

10. The act of the employer in conducting espionage or surveillance of the meetings and activities of the union. Surveillance is illegal since it shows the opposition of the employer to the existence of the union, and the furtive nature of his activity tends to demonstrate spectacularly the state of his anxiety. (51A CJS Sec. 382, p. 278). When an employer engages in surveillance or takes steps leading his employees to believe it is going on, a violation results because the employees come under threat of economic coercion or retaliation for their union activities. (*Henriz Manufacturing Co. vs. NLRB*, 321 F 2d 00).

11. Refusal of the employer to reinstate an employee who was illegally dismissed based on the union security clause, unless the latter admits his guilt. (*Litex Employees Association, vs. CIR*, G. R. No. L-39154, Sept. 9, 1982; 116 SCRA 459).

12. The act of the purchasers of a business establishment in replacing the union members who were negotiating a CBA with the old owner at the time of the sale. (*National Labor Union vs. CIR*, G. R. No. L-31276, Sept. 9, 1982).

13. The announcement by the employer of benefits prior to the conduct of a certification election, intended to induce the employees to vote against the union. (*Re Louisiana Plastics, Inc. 173 NLRB No. 218; NLRB vs. Exchange Parts Co.*, 375 U. S. 405).

14. The grant of concessions and privileges during the pendency of certification election case to members of one of the unions participating therein. (*Philippine Charity Sweepstakes Office, vs. The Association of Sweepstakes Staff Personnel*, G. R. No. L-27546, July 16, 1982).

15. The act of the employer in suspending union officers who attended the hearing in the petition for certification election they filed. (*CLLC E. G. Gochangco Workers Union, vs. NLRC*, G. R. Nos. 67158-62, May 30, 1988).

16. The uneven application by the employer of the company's marketing plan which caused undue hardship to the president and vice president of the union. (*AHS/Philippine Employees Union vs. NLRC*, G. R. No. 73721, March 30, 1987).

17. The act of the employer in ceasing its operation due to establishment of the union. The determination to cease operations is a prerogative of management that is usually not interfered with by the State as no business can be required to continue operating at a loss simply to maintain the workers in employment. That would be taking of property without due process of law which the employer has a right to resist. But where it is manifest that the closure is motivated not by a desire to avoid further losses but to discourage the workers from organizing themselves into a union for more effective negotiations with the management, the State is bound to intervene. (*Carmelcraft Corporation vs. NLRC*, G. R. Nos. 90634-35, June 6, 1990; *Sy Chie Junk Shop vs. Federacion Obrero de la Industria*, G. R. No. 30964, May 9, 1988).

18. Simulated sale in bad faith of business, resorted to merely to get rid of the employees who were members of the union. (*Moncada Bijon Factory vs. CIR*, 4 SCRA 756; *Cruz vs. PAFLU*, 42 SCRA 68; *National Labor Union vs. CIR*, 116 SCRA 417).

19. The act of the employer in engaging in capital reduction to camouflage the fact that it had been making profit, in order for it to be able to effectuate the mass lay-off of union members. (*Madrigal & Co., Inc. vs. Zamora*, G. R. No. L-48237, June 30, 1987, 151 SCRA 355).

20. The retrenchment of employees who belong to a particular union, with no satisfactory justification why said employees were singled out. (*Bataan Shipyard and Engineering Co., Inc., vs. NLRC*, G. R. No. 78604, May 9, 1988).

21. The act of the employer in asking the employees to disclose the names of the members of the union. (*Samahan ng Manggagawa sa Bandolino-LMLC vs. NLRC*, 275 SCRA 633 [July 17, 1997]).

22. The act of the employer in putting on "rotation" only the alleged members of the union. (*Samahan ng Manggagawa sa Bandolino-LMLC vs. NLRC*, 275 SCRA 633 [July 17, 1997]).

23. The act of the employer in compelling employees to sign an instrument indicating that the employer observed labor standards provisions of law when he might have not, together with the act of terminating or coercing those who refuse to cooperate with the employer's scheme. (*Mabeza vs. NLRC* G. R. No. 118506, April 18, 1997, 271 SCRA 670).

24. An apprehension that there might be a future strike in the school is not a ground for dismissal of teachers who have attained permanent status. This is an unwarranted interference

with the rights of workers to self-organization and to engage in concerted activities. While a strike may result in hardships or prejudice to the school and the studentry, the employer is not without recourse. If the employer feels that the action is tainted with illegality, the law provides the employer with ample remedies to protect his interest. Dismissal of employees in anticipation of an exercise of a constitutionally protected right is not one of them. (*Rizal Memorial Colleges Faculty Union vs. NLRC*, G. R. No. 59012-13, Oct. 12, 1989).

25. To justify the closure of a business and the termination of the services of the concerned employees, the law requires the employer to prove that it suffered substantial actual losses. The cessation of a company's operations shortly after the organization of a labor union, as well as the resumption of business barely a month after, gives credence to the employees' claim that the closure was meant to discourage union membership and to interfere in union activities. These acts constitute unfair labor practices. The reason invoked by petitioners to justify the cessation of corporate operations was alleged business losses which they, however, failed to substantiate by any credible evidence. (*Me-Shurn Corporation vs. Me-Shurn Workers Union – FSM*, G. R. No. 156292, Jan. 11, 2005).

26. The act of the employer in dismissing its employees because of their union activities. (*Litex Employees Association, vs. CIR*, G. R. No. L-39154, Sept. 9, 1982, 116 SCRA 459; *Union of Supervisors [R. B.] NATU vs. Secretary of Labor and Republic Bank*, G. R. No. L-39889, Nov. 12, 1981).

27. The act of the employer in dismissing the union officers and members on the ground of losses about two years after it has allegedly sustained losses and after the dismissed officers and members became more militant when they demanded for the improvement of their working conditions in the company. (*Oceanic Air Products, Inc. vs. CIR*, G. R. No. L-18704, Jan. 31, 1963).

28. The act of an employer in unduly dismissing workers based on union security clause in the CBA. (*San Carlos Milling Co., vs. CIR*, 1 SCRA 734; *Rance vs. NLRC*, G. R. No. 68147, June 30, 1988).

29. The act of the employer in effecting discriminatory dismissal where only unionists were permanently dismissed. This holds true even where business conditions justify a lay-off of employees. (*San Miguel Corporation vs. NLRC*, G. R. No. 108001, March 15, 1996, 255 SCRA 133, 141; *See also Bataan Shipyard and Engineering Co., Inc. vs. NLRC*, 161 SCRA 271 [1988]).

30. The mass lay-off or dismissal of 65 employees due to retrenchment absent any losses or financial reverses. Retrenchment would constitute a lame excuse and a veritable smokescreen of the employer's scheme to bust the union and thus unduly disturb the employment tenure of the employees concerned, which act is certainly an unfair labor practice. (*People's Bank and Trust Co. vs. People's Bank and Trust Co. Employees Union*, G. R. No. L-39603, Jan. 13, 1976).

31. Dismissal occasioned by the refusal of employees to give up their union membership, which dismissal was under the pretext of retrenchment due to reduced dollar allocations. (*Manila Pencil Co. vs. CIR*, 14 SCRA 953).

32. Dismissal of an employee because of his act of soliciting signatures for the purpose of forming a union. (*Judric Canning Corporation vs. Inciong*, G. R. No. L-51494, Aug. 19, 1982, 115 SCRA 887).

33. Dismissal of employees because of their refusal to resign from their union and to join the union favorable to the employer, the latter's formation having been aided and abetted by the company. (*Progressive Development Corporation, vs. CIR*, G. R. No. L-39546, Nov. 24, 1977, 80 SCRA 434).

34. Dismissal of employees because of their act of engaging in valid and legal concerted union activities. (*Republic Savings Bank vs. CIR*, 21 SCRA 226).

35. The act of the employer in provoking the union officers into a fight by two recently hired employees pursuant to a strategy of the company designed to provide an apparently lawful cause for their dismissal, and said dismissed employees have not figured in similar incidents before or violated company rules in their many years with the company. (*Visayan Bicycle Manufacturing Co., Inc. vs. National Labor Union and CIR*, G. R. No. L-19997, May 19, 1965, 14 SCRA 5).

36. Dismissal occasioned by the implausible and unproved allegation of overpricing of needles the employee was ordered to buy and for alleged tampering of receipts. (*Kapisanan ng Manggagawa sa Camara Shoes vs. Camara Shoes*, G. R. No. L-50985, Jan. 30, 1982).

37. Dismissal of an employee who had worked for 19 years because he had filed money claims against the employer. (*Sibal vs. Notre Dame of Greater Manila*, G. R. No. 75093, Feb. 23, 1990).

#### ILLUSTRATIVE CASES WHERE UNION WAS DECLARED GUILTY

**OF UNFAIR LABOR PRACTICE.**

In the case of **Rizal Labor Union vs. Rizal Cement Co.**, [G. R. No. L-19779, July 30, 1966], both the union and management were declared guilty of unfair labor practice when the union requested the dismissal of fifteen (15) employees and management acceded by effecting the dismissal on the ground that the said employees formed another union, it appearing that the union security clause in the CBA merely provided for a limited closed shop which did not justify the dismissal.

In **Salunga vs. CIR**, [G. R. No. L-22456, Sept. 27, 1967], where the union member resigned from the union but, upon being advised by the company of the consequence of his resignation which is dismissal from the company, the said union member withdrew or revoked his resignation but the union refused to readmit him, the Supreme Court ruled that it is well-settled that unions are not entitled to arbitrarily exclude qualified applicants for membership and a closed shop provision would not justify the employer in discharging, or a union in insisting upon the discharge of, an employee whom the union thus refuses to admit to membership, without any reasonable ground therefor. Needless to say, if said unions may be compelled to admit new members who have the requisite qualifications, with more reason may the law and the courts exercise the coercive power when the employee involved is a long-standing union member who, owing to provocations of union officers, was impelled to tender his resignation, which he forthwith withdrew or revoked. Surely, he may, at least, invoke the rights of those who seek admission for the first time, and cannot arbitrarily be denied readmission. The union here was declared to have committed unfair labor practice but the company was spared from any liability. Nonetheless, the dismissed employee was ordered reinstated to his former or substantially equivalent position in the company, without prejudice to his seniority and/or rights and privileges, and with back pay which should be borne exclusively by the union.

In **Liberty Cotton Mills Workers Union vs. Liberty Cotton Mills, Inc.**, [G. R. No. L-22987, Sept. 4, 1975], the Supreme Court adjudged both the mother federation and the employer accountable for the dismissal of workers who instigated the disaffiliation of the local union from the federation. The right to disaffiliate is inherent in the contract and the act of disaffiliation was justified by the alleged negligence of the federation in attending to the needs of the local union.

In **Manila Mandarin Employees Union vs. NLRC**, [154 SCRA 369], the union was held guilty of unfair labor practice when it expelled and demanded and caused the dismissal of a union member based on the union security clause in the CBA. The Supreme Court ruled that union security clauses are governed by law and by principles of justice, fair play and legality. Union security clauses cannot be used by union officials against an employer, much less their own members, except with a high sense of responsibility, fairness, prudence and judiciousness. A union member may not be expelled from her union, and consequently from her job, for personal or impetuous reasons or for causes foreign to the closed shop agreement and in a manner characterized by arbitrariness and whimsicality.

In **Rance vs. NLRC**, [G. R. No. 68147, June 30, 1988], it was held that the act of some union members of seeking help from another federation cannot constitute disloyalty as contemplated in the CBA. At most, it was an act of self-preservation of workers who, driven to desperation, found shelter in the other federation who took the cudgels for them. The dismissed union members were denied due process when they were dismissed for disloyalty to the union based on the union security clause in the CBA. There was no impartial tribunal or body vested with authority to conduct disciplinary proceeding under the constitution and by-laws and the expelled union members were not furnished notice of the charge against them, nor timely notices of the hearing on the same. Petitioners had no idea that they were charged with disloyalty. Those who came were not only threatened with persecution but also made to write the answers to questions as dictated to them by the union and the company representatives.

Even if the petitioners appeared in the supposed investigation proceedings to answer the charge of disloyalty against them, it could not have altered the fact that the proceedings violated the rule of fair play. The Board of Directors of the union acted as prosecutor, investigator and judge at the same time. The proceedings would have been a farce. The absence of a full blown investigation of the expelled members of the union by an impartial body, provided no basis for the union's accusation of disloyalty. Employees are entitled to due process before they may be expelled from the union on charge of disloyalty. They are entitled to reinstatement to their

positions without reduction in rank, payment of three-year backwages and payment of exemplary damages.

Consequently, it was declared by the High Court that the scandalous haste with which respondent corporation dismissed 125 employees lent credence to the claim that there was connivance between respondent corporation and respondent union. It is evident that private respondents were in bad faith in dismissing petitioners. They, the private respondents, are guilty of unfair labor practice.

#### **CASES NOT INVOLVING UNFAIR LABOR PRACTICES.**

The following cases do not involve unfair labor practice:

1. The grant of profit-sharing benefits to managers, supervisors and all rank-and-file employees not covered by the CBA is not discriminatory but a valid exercise of management prerogative. Management has the prerogative to regulate, according to its discretion and judgment, all aspects of employment. Such management prerogative may be availed of without fear of any liability so long as it is exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of employees under special laws or valid agreement and is not exercised in a malicious, harsh, oppressive, vindictive or wanton manner or out of malice or spite. (*Wise and Co., Inc. vs. Wise and Co., Inc. Employees Union*, G. R. No. 87677, Oct. 13, 1989).

2. In the absence of a showing that the illegal dismissal was dictated by anti-union motives, it does not constitute an unfair labor practice that would justify the staging of a strike. The remedy is an action for reinstatement with prayer for backwages and damages. (*AHS/Philippine Employees Union vs. NLRC*, G. R. No. 73721, March 30, 1987).

3. The transfer of employees is a prerogative of management such as in one case where the employee who was transferred to a lower position, retained his original rank and salary. In the absence of any evidence which directly reflects interference by the company with the employee's right to self-organization, the transfer of the employee should be considered legal. (*Rubberworld [Phils.], Inc. vs. NLRC*, G. R. No. 75704, July 19, 1989).

4. The promotion of employees to managerial positions is a prerogative of management. A promotion which is manifestly beneficial to an employee should not give rise to a gratuitous speculation that such a promotion was made simply to deprive the union of the membership of the promoted employee. (*Bulletin Publishing Co. vs. Sanchez*, G. R. No. 74425, Oct. 7, 1986).

5. Mandatory or forced vacation leaves imposed by the employer due to economic crisis and not in a malicious, harsh, oppressive, vindictive nor wanton manner, where the workers were paid while on leave but the same was charged against their respective earned leaves, is not an unfair labor practice act. It is a valid exercise of management prerogative. (*Philippine Graphic Arts, Inc. vs. NLRC*, 166 SCRA 118).

6. The dismissal of an employee due to loss of confidence is not unfair labor practice. (*Nevans vs. CIR*, G. R. No. L-21510, June 29, 1968).

7. The dismissal of an employee cannot be considered an unfair labor practice act if it appears that other employees more active than him in the union were retained. (*National Union of Restaurant Workers [PTUC] vs. CIR*, G. R. No. L-20044, April 30, 1964).

8. The act of the employer in refusing to re-admit striking workers after the strike was declared illegal, is not an unfair labor practice act. (*GOP-OCP Workers Union vs. CIR*, G. R. No. L-33015, Sept. 10, 1979).

9. Dismissal of workers pursuant to the union security clause in the CBA, after affording them due process, is not unfair labor practice. (*Samahan ng mga Manggagawa sa M. Greenfield (MSMG-UWP) vs. Ramos*, G. R. No. 113907, Feb. 28, 2000; *Malayang Manggagawa vs. Ang Tibay*, 102 Phil. 669; *Bacolod-Murcia Milling vs. Victorias-Manapla Workers*, 9 SCRA 154).

10. The failure of the employer to comply with the final order of reinstatement cannot be considered unfair labor practice in the light of a government directive which rendered reinstatement an impossibility. (*Arrastre Security Association vs. Ople*, 127 SCRA 580).

11. An error in the interpretation of a provision of the CBA, absent any malice or bad faith, is not unfair labor practice. Honest differences in construction may arise in the actual application of contractual provisions. (*Singapore Airlines Local Employees Association vs. NLRC*, 130 SCRA 472).

12. Dismissal of a supervisor who organized a labor union composed of men under his supervision is not unfair labor practice. (*Fortich vs. CIR*, 93 SCRA 1).

13. Failure to re-admit striking workers at the same time is not unfair labor practice as there exist justifiable reasons not to effect their simultaneous readmission. As a consequence of the two strikes which were both attended by widespread violence and vandalism, the business of the employer was completely paralyzed. There were machines that were not in operating conditions because of long disuse during the strikes. (*Lakas ng Manggagawang Makabayan vs. Marcelo Enterprises*, G. R. No. 38258, Nov. 12, 1982, 118 SCRA 422).

14. The decision of the employer to consider the top officers of petitioner union as unfit for reinstatement is not essentially discriminatory and constitutive of an unlawful labor practice of employers under Article 248 of the Labor Code. Discrimination in the context of the Labor Code involves either encouraging membership in any labor organization or is made on account of the employee's having given or being about to give testimony under the Labor Code. There is no ULP if this is not proven by evidence. (*Great Pacific Life Employees Union vs. Great Pacific Life Assurance Corporation*, G. R. No. 126717, Feb. 11, 1999).

15. The refusal of a shipping agency to hire and employ security guards affiliated with a security agency which does not post a bond is not unfair labor practice. Such refusal is legitimate exercise of the right to protect its own interests. (*Associated Watchmen and Security Union vs. Lanting*, 107 Phil. 275).

16. In a case involving the mass "protest retirement/resignation" of pilots, the Supreme Court ruled that such is not a concerted activity which is within the protection of the law as they did not assume the status of strikers. No unfair labor practice is committed by their employer when it accepted their said retirement/resignation from the company. It cannot be said that they were dismissed. (*Enriquez vs. Zamora*, G. R. No. 51382, Dec. 29, 1986).

17. The act of the employer in filing a petition for cancellation of the union's registration is not *per se* an act of unfair labor practice. It must be shown by substantial evidence that the filing of the petition for cancellation of union registration by the employer was aimed to oppress the union. (*Rural Bank of Alaminos Employees Union [RBAEU] vs. NLRC*, G. R. Nos. 100342-44, Oct. 29, 1999).

#### **60. What are the latest cases involving the issue of ULP?**

##### ***Interference in the choice of union's bargaining panel.***

In the case of **Standard Chartered Bank Employees Union [NUBE] vs. Confesor**, [G. R. No. 114974, June 16, 2004], it was declared that if an employer interferes in the selection of the union's negotiators or coerces the union to exclude from its panel of negotiators a representative of the union, and if it can be inferred that the employer adopted the said act to yield adverse effects on the free exercise to right to self-organization or on the right to collective bargaining of the employees, ULP under Article 248(a) in connection with Article 243 of the Labor Code is committed. However, in this case, the act of the bank's Human Resource Manager in suggesting the exclusion of the federation president from the negotiating panel was not considered ULP. It is not an anti-union conduct from which it can be inferred that the bank consciously adopted such act to yield adverse effects on the free exercise of the right to self-organization and collective bargaining of the employees, especially considering that such was undertaken previous to the commencement of the negotiation and simultaneously with the manager's suggestion that the bank lawyers be excluded from its negotiating panel. The records show that after the initiation of the collective bargaining process, with the inclusion of the

federation president in the union's negotiating panel, the negotiations pushed through. If at all, the suggestion should be construed as part of the normal relations and innocent communications which are all part of the friendly relations between the union and the bank.

*Interference in the employees' right to self-organization.*

In **General Milling Corporation vs. CA**, [G. R. No. 146728, February 11, 2004], the Supreme Court considered the act of the employer in presenting the letters between February to June 1993 by 13 union members signifying their resignation from the union clearly indicative of the employer's pressure on its employees. The records show that the employer presented these letters to prove that the union no longer enjoyed the support of the workers. The fact that the resignations of the union members occurred during the pendency of the case before the Labor Arbiter shows the employer's desperate attempts to cast doubt on the legitimate status of the union. The ill-timed letters of resignation from the union members indicate that the employer had interfered with the right of its employees to self-organization. Thus, it is guilty of unfair labor practice for interfering with the right of its employees to self-organization.

In **Hacienda Fatima vs. National Federation of Sugarcane Workers – Food and General Trade**, [G. R. No. 149440, January 28, 2003], the Supreme Court upheld the factual findings of the NLRC and the Court of Appeals that from the employer's refusal to bargain to its acts of economic inducements resulting in the promotion of those who withdrew from the union, the use of armed guards to prevent the organizers to come in, and the dismissal of union officials and members, one cannot but conclude that the employer did not want a union in its hacienda - a clear interference in the right of the workers to self-organization. Hence, the employer is guilty of unfair labor practice.

In **De Leon vs. NLRC and Fortune Tobacco Corporation**, [G. R. No. 112661, May 30, 2001], the Supreme Court held that based on the facts, there is sufficient ground to conclude that respondents were guilty of interfering with the right of petitioners to self-organization which constitutes unfair labor practice under Article 248 of the Labor Code. Petitioner-security guards have been employed with Fortune Integrated Services, Inc. (FISI) since the 1980's and have since been posted at the premises of Fortune Tobacco Corporation (FTC) - its main factory plant, its tobacco redrying plant and warehouse. It appears from the records that FISI, while having its own corporate identity, was a mere instrumentality of FTC, tasked to provide protection and security in the company premises. The records show that the two corporations had identical stockholders and the same business address. FISI also had no other clients except FTC and other companies belonging to the Lucio Tan group of companies. Moreover, the early payslips of petitioners show that their salaries were initially paid by FTC. To enforce their rightful benefits under the laws on labor standards, petitioners formed a union which was later certified as bargaining agent of all the security guards. On February 1, 1991, the stockholders of FISI sold all their participations in the corporation to a new set of stockholders which renamed the corporation Magnum Integrated Services, Inc. On October 15, 1991, FTC, without any reason, preterminated its contract of security services with MISI and contracted two other agencies to provide security services for its premises. This resulted in the displacement of petitioners. As MISI had no other clients, it failed to give new assignments to petitioners. Petitioners have remained unemployed since then. All these facts indicate a concerted effort on the part of respondents to remove petitioners from the company and thus abate the growth of the union and block its actions to enforce their demands in accordance with the labor standards laws.

*When termination of union president constitutes interference with the employees' right to self-organization.*

The outright termination for alleged insubordination of the union president, in the 2000 case of **Colegio de San Juan de Letran vs. Association of Employees and Faculty of Letran**, [G. R. No. 141471, September 18, 2000], while the CBA negotiation was on-going, was declared as constitutive of union busting as it interfered with the employees' right to self-organization. The factual backdrop of her termination leads to no other conclusion that she was dismissed in order to strip the union of a leader who would fight for the right of her co-workers at the bargaining table.

*Failure or refusal of management to give counter-proposal, effect.*

In the 2004 case of **General Milling Corporation vs. CA**, [G. R. No. 146728, February 11, 2004], the Supreme Court declared that the petitioner is guilty of unfair labor practice under Article 248 [g] for refusing to send a counter-proposal to the union and to bargain anew on the economic terms of the CBA. It ruled:

“The law mandates that the representation provision of a CBA should last for five years. The relation between labor and management should be undisturbed until the last 60 days of the fifth year. Hence, it is indisputable that when the union requested for a renegotiation of the economic terms of the CBA on November 29, 1991, it was still the certified collective bargaining agent of the workers, because it was seeking said renegotiation within five (5) years from the date of effectivity of the CBA on December 1, 1988. The union’s proposal was also submitted within the prescribed 3-year period from the date of effectivity of the CBA, albeit just before the last day of said period. It was obvious that GMC had no valid reason to refuse to negotiate in good faith with the union. For refusing to send a counter-proposal to the union and to bargain anew on the economic terms of the CBA, the company committed an unfair labor practice under Article 248 of the Labor Code.”

Similarly, in the earlier 2000 case of **Colegio de San Juan de Letran vs. Association of Employees and Faculty of Letran**, [G. R. No. 141471, September 18, 2000], the petitioner school was declared guilty of unfair labor practice when it failed to make a timely reply to the proposals of the union more than a month after the same were submitted by the union. In explaining its failure to reply, the school merely offered the feeble excuse that its Board of Trustees had not yet convened to discuss the matter. Clearly, its actuation showed a lack of sincere desire to negotiate rendering it guilty of unfair labor practice.

**“Surface bargaining” on the part of management.**

“Surface bargaining” is defined as “going through the motions of negotiating” without any legal intent to reach an agreement. (*Standard Chartered Bank Employees Union [NUBE] vs. Confesor*, G. R. No. 114974, June 16, 2004).

The resolution of surface bargaining allegations never presents an easy issue. The determination of whether a party has engaged in unlawful surface bargaining is usually a difficult one because it involves, at bottom, a question of the intent of the party in question, and usually such intent can only be inferred from the totality of the challenged party’s conduct both at and away from the bargaining table. (*Luck Limousine*, 312 NLRB 770, 789 [1993]).

According to **Standard Chartered Bank Employees Union [NUBE] vs. Confesor**, [G. R. No. 114974, June 16, 2004], surface bargaining involves the question of whether an employer’s conduct demonstrates an unwillingness to bargain in good faith or is merely hard bargaining. There can be no surface bargaining, absent any evidence that management had done acts, both at and away from the bargaining table, which tend to show that it did not want to reach an agreement with the union or to settle the differences between it and the union. Here, admittedly, the parties were not able to agree and reached a deadlock. However, it must be emphasized that the duty to bargain “does not compel either party to agree to a proposal or require the making of a concession.” Hence, the parties’ failure to agree does not amount to ULP under Article 248 [g] for violation of the duty to bargain. (*See also National Union of Restaurant Workers [PTUC] vs. CIR*, 10 SCRA 843 [1964]).

**“Blue-sky bargaining” on the part of union.**

“Blue-sky bargaining” means making exaggerated or unreasonable proposals. (*Arthur A. Sloane and Fred Witney, Labor Relations, 7<sup>th</sup> Edition 1991, p. 195*).

In order to be considered as unfair labor practice, there must be proof that the demands made by the union were exaggerated or unreasonable. In the same 2004 case of *Standard Chartered Bank* [supra], the minutes of the meeting show that the union based its economic proposals on data of rank-and-file employees and the prevailing economic benefits received by bank employees from other foreign banks doing business in the Philippines and other branches of

the bank in the Asian region. Hence, it cannot be said that the union was guilty of ULP for blue-sky bargaining.

***Refusal to furnish financial information is ULP; exception.***

While the refusal to furnish requested information is in itself an unfair labor practice and also supports the inference of surface bargaining, however, if the union failed to put its request in writing as required in Article 242 [c] of the Labor Code, management cannot be held liable for ULP. (*Standard Chartered Bank Employees Union [NUBE] vs. Confesor, supra*).

***Signing of CBA does not estop a party from raising issue of ULP.***

The eventual signing of the CBA does not operate to estop the parties from raising ULP charges against each other. Consequently, as held by the High Court in *Standard Chartered Bank* [supra], the approval of the CBA and the release of signing bonus do not necessarily mean that the union waived its ULP claim against the management during the past negotiations. After all, the conclusion of the CBA was included in the order of the Secretary of Labor and Employment, while the signing bonus was included in the CBA itself.

**61. Who has the burden of proof in ULP cases?**

In unfair labor practice cases, it is the union which has the burden of proof to present substantial evidence to support its allegations of unfair labor practices committed by the employer. It is not enough that the union believed that the employer committed acts of unfair labor practice when the circumstances clearly negate even a *prima facie* showing to warrant such a belief. (*Tiu vs. NLRC, G. R. No. 123276, Aug. 18, 1997, 277 SCRA 680, 687; See also Schering Employees Labor Union [SELU] vs. Schering Plough Corporation, G. R. No. 142506, Feb. 17, 2005; Samahang Manggagawa sa Sulpicio Lines, Inc. -NAFLU vs. Sulpicio Lines, Inc., G.R. No. 140992, March 25, 2004*).

## LABOR ORGANIZATIONS

### **COVERAGE OF RIGHT TO SELF-ORGANIZATION**

**62. Who may exercise the right to self-organization?**

All persons employed in commercial, industrial and agricultural enterprises and in religious, charitable, medical, or educational institutions, whether operating for profit or not, shall have the right to self-organization and to form, join, or assist labor organizations of their own choosing for purposes of collective bargaining. Ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form labor organizations for their mutual aid and protection.

Any employee, whether employed for a definite period or not, shall beginning ***on the first day of his/her service***, be eligible for membership in any labor organization. (*Ibid.*; See also Article 277 [c], Labor Code; No. 10, Basic Amendments under R. A. 6715, prepared by Members of the Senate-House Conference Committee of Congress).

**63. May employees in the public service exercise their right to self-organize?**

Employees of government corporations established under the Corporation Code (**without original charters**) shall have the right to organize and to bargain collectively with their respective employers. All other employees in the civil service shall have the right to form associations for purposes not contrary to law.

**64. May aliens exercise the right to self-organization?**

**General rule:** All aliens, natural or juridical, as well as foreign organizations are strictly prohibited from engaging directly or indirectly in all forms of trade union activities without prejudice to normal contacts between Philippine labor unions and recognized international labor

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

**65. What are the three categories of employees?**

- a. *Managerial* employees;
- b. *Supervisory* employees; and
- c. *Rank-and-file* employees.

**66. What are the three types of managerial employees?**

The three (3) types of managerial employees are as follows:

1. **Top management;**
2. **Middle management;** and
3. **First-line management.**

*(See United Pepsi0Cola Supervisors Union vs. Laguesma, 288 SCRA 15 and Paper Industries Corp. of the Philippines vs. Laguesma, G. R. No. 101738, April 12, 2000)*

**67. Are managerial employees allowed to unionize? How about supervisory employees?**

As a general rule, only top and middle managers are **not** allowed to join any labor organization. **First-line managers** (or **supervisory employees**) are allowed to join a supervisory union but **not** the union of rank-and-file employees or *vice-versa*. In fact, the law does not allow mixed membership of both supervisory and rank-and-file employees in one union. A union with such mixed membership is no union at all. It cannot exercise the rights of a legitimate labor organization.

**68. What is the distinction between managerial employees and supervisory employees?**

The principal distinction between **managerial** employees and **supervisory** employees is: the **former** have the **power to decide** and do managerial acts; while the **latter** have the power only **to recommend** managerial acts such as laying down policy, hiring or dismissal of employees and the like.

**69. What is the “separation of unions” doctrine?**

The “**separation of unions**” doctrine simply means that the affiliation of *both* the rank-and-file union and supervisory union in the same company with *one and the same federation* is **not** allowed if the rank-and-file employees are under the direct supervision of the supervisors composing the supervisory union. If **not**, said affiliation with one and the same federation is allowed.

**70. What is the “confidential employee” doctrine?**

Under the “**confidential employee rule**”, confidential employees are **not** allowed to join any union (as they are treated like managers) when they: (1) assist or act in a confidential capacity, (2) to persons who formulate, determine, and effectuate management policies specifically ***in the field of labor relations***. Otherwise, if these two conditions do not concur, they can join a union. Simply put, if the confidential information to which an employee has access has nothing to do with labor relations, such employee cannot be considered a confidential employee under this rule.

## **LABOR ORGANIZATIONS**

**71. What is a labor organization?**

A **labor organization** is any union or association of employees which exists in whole or in part for the purpose of collective bargaining or for dealing with employers concerning terms and conditions of employment. It is considered “**legitimate**” if duly **registered** with DOLE.

**72. What is the significance of issuance of Certificate of Registration to a union?**

In **Tagaytay Highlands International Golf Club, Inc. vs. Tagaytay Highlands Employees Union-PGTWO** (*G. R. No. 142000, January 22, 2003*), the Supreme Court ruled that the effect of issuance of certificate of registration to a union is that it becomes legitimate and its legal personality can only be attacked through a petition for cancellation of registration and not thru intervention in a certification election petition.

**73. What is a workers' association?**

A **workers' association** is any association of workers organized for the mutual aid and protection of its members or for any legitimate purpose **other than** collective bargaining. Registration with DOLE makes it **legitimate**.

**74. What is the distinction between a labor organization and a workers' association?**

A **labor organization** is established principally for collective bargaining purposes; while a **workers' association** is organized for the mutual aid and protection of its members but **not** for collective bargaining purposes.

**75. What are the purposes of a labor organization?**

- (1) Collective bargaining; and
- (2) Dealing with employers regarding the terms and conditions of the employment relationship..

**76. How is a labor organization registered?**

The application for registration must be supported by at least **20%** of the members of the **bargaining unit**.

**77. What is a bargaining unit?**

A **"bargaining unit"** is the group or cluster of jobs or positions that supports the labor organization which is applying for registration, within the employer's establishment.

**CHARTERING AND AFFILIATION**

**78. What is a national union or federation?**

**"National Union"** or **"Federation"** refers to a group of legitimate labor unions in a private establishment organized for collective bargaining or for dealing with employers concerning terms and conditions of employment for their member-unions or for participating in the formulation of social and employment policies, standards and programs, registered with the Bureau of Labor Relations.

**79. What is an affiliate?**

**"Affiliate"** refers to:

1. an *independent union* affiliated with a federation, national union; or
2. a *chartered local* which was subsequently granted independent registration but did not disaffiliate from its federation.

**80. What is a chartered local?**

**"Chartered Local"** refers to a labor organization in the private sector operating at the enterprise level that acquired legal personality through the issuance of a charter certificate by a federation or a national union. Under the old rule, this is known simply as **"local"** or **"chapter."**

**81. What is an independent union?**

**“Independent Union”** refers to a labor organization operating at the enterprise level that acquired legal personality through independent registration under Article 234 of the Labor Code.

**82. Are chartered locals required to acquire independent registration in order to have legal personality?**

In **Laguna Autoparts Manufacturing Corporation vs. Office of the Secretary, DOLE**, [G. R. No. 157146, April 29, 2005], it was held that a local or chapter need not be independently registered to acquire legal personality.

Under **DOLE Department Order No. 40-03, Series of 2003**, it is now enunciated, under **Section 8, Rule IV, Book V** thereof, that a chartered local is “vested with legal personality on the date of issuance of certificate of creation of chartered local.” This is as it should be since it is believed that by the mere expedience of “filing of the complete documents” for registration should not, by itself, accord legal personality to the chartered local. Using the date of the issuance of the certificate of creation of chartered local as the reckoning point of the vesture of legal personality is certainly the better rule. For obvious reason, it is only upon the issuance of said certificate that all the documents filed are presumed to have been passed upon and found to be in full compliance with the law.

**83. What is the proof of affiliation with a federation?**

The proof of affiliation depends on the nature of the affiliation. Thus, if:

1. Chartered local. - Charter certificate issued by the federation or national union.
2. Independently-registered union. - contract of affiliation between federation and the union.

**84. What is the effect of affiliation?**

A labor union which affiliates with a federation or national union becomes subject to the rules and regulations of the latter. The **federation** is the *principal* and the **local union**, the *agent*.

An *independently-registered* union does **not** lose its independent legal personality when it affiliates with a federation or national union. Appending the name of the federation to the local union's name does not mean that the federation absorbed the latter.

**85. Which one is liable for damages in case of illegal strike – the local union or federation?**

In **Filipino Pipe and Foundry Corporation vs. NLRC**, (G. R. No. 115180, November 16, 1999), it was held that it is the local union and *not* the federation which is liable to pay damages in case of illegal strike.

**86. What is disaffiliation?**

The right to disaffiliate by the local union from its mother union or federation, is a constitutionally-guaranteed right which may be invoked by the former at any time. It is not an act of disloyalty on the part of the local union nor is it a violation of the “*union security clause*” in the CBA.

In the absence of specific provisions in the federation’s constitution prohibiting disaffiliation or the declaration of autonomy of a local union, a local may dissociate with its parent union. Thus, in one case, it was held that there can be no disloyalty to speak of since there is no provision in the federation’s constitution which specifically prohibits disaffiliation or declaration of autonomy.

The local union, by disaffiliating from the old federation to join a new federation, is merely exercising its primary right to labor organization for the effective enhancement and protection of common interests. Absent any enforceable provisions in the federation’s constitution expressly forbidding disaffiliation of a local union, a local union may sever its relationship with its parent union.

Once the fact of disaffiliation has been manifested beyond doubt, a certification election is the most expeditious way of determining which labor organization is to be treated as the exclusive bargaining agent.

Disaffiliation should always carry the will of the majority. It cannot be effected by a mere minority group of union members. (*Villar vs. Inciong*, 121 SCRA 444).

The obligation to check-off federation dues is terminated with the valid disaffiliation of the local union from the federation with which it was previously affiliated.

It was held in **Philippine Skylanders, Inc. vs. NLRC**, (G. R. No. 127374, January 31, 2002), that the right of a local union to disaffiliate from its mother federation is not a novel thesis unilluminated by case law. In the landmark case of *Liberty Cotton Mills Workers Union Vs. Liberty Cotton Mills, Inc.* [No. L-33987, September 4, 1975, 66 SCRA 512], the Supreme Court upheld the right of local unions to separate from their mother federation on the ground that as separate and voluntary associations, local unions do not owe their creation and existence to the national federation to which they are affiliated but, instead, to the will of their members. The sole essence of affiliation is to increase, by collective action, the common bargaining power of local unions for the effective enhancement and protection of their interests. Admittedly, there are times when without succor and support local unions may find it hard, unaided by other support groups, to secure justice for themselves.

Yet the local unions remain the basic units of association, free to serve their own interests subject to the restraints imposed by the constitution and by-laws of the national federation, and free also to renounce the affiliation upon the terms laid down in the agreement which brought such affiliation into existence.

Such dictum has been punctiliously followed since then.

Upon an application of the afore-cited principle to the issue at hand, the impropriety of the questioned Decisions becomes clearly apparent. There is nothing shown in the records nor is it claimed by AFLU that the local union was expressly forbidden to disaffiliate from the federation nor were there any conditions imposed for a valid breakaway. As such, the pendency of an election protest involving both the mother federation and the local union did not constitute a bar to a valid disaffiliation. Neither was it disputed by PAFLU that 111 signatories out of the 120 members of the local union, or an equivalent of 92.5% of the total union membership supported the claim of disaffiliation and had in fact disauthorized PAFLU from instituting any complaint in their behalf. Surely, this is not a case where one (1) or two (2) members of the local union decided to disaffiliate from the mother federation, but it is a case where almost all local union members decided to disaffiliate.

It was entirely reasonable then for PSI to enter into a collective bargaining agreement with PSEA-NCW. As PSEA had validly severed itself from PAFLU, there would be no restrictions which could validly hinder it from subsequently affiliating with NCW and entering into a collective bargaining agreement in behalf of its members.

### ***87. Disaffiliation of independently-registered union and chartered local, distinguished.***

The disaffiliation of an independently-registered union does not affect its legitimate status as a labor organization. However, the same thing may not be said of a union which is not independently-registered (chartered local).

Once a chartered local disaffiliates from the federation, it ceases to be entitled to the rights and privileges granted to a legitimate labor organization. It cannot file a petition for certification election. (*Villar vs. Inciong*, 121 SCRA 444, April 20, 1983).

### ***88. Does the act of the union in disaffiliating and entering into a CBA with the employer constitute unfair labor practice?***

In **Philippine Skylanders, Inc. vs. NLRC**, [G. R. No. 127374, Jan. 31, 2002], the mother federation with which the local union was formerly affiliated instituted a complaint for

unfair labor practice against the employer (which refused to negotiate a CBA with said federation because the local union had already effectively and validly disaffiliated from it), and the local union and their respective officers because of the act of the local union in disaffiliating from the mother federation and in entering into a CBA with the employer without its participation. The Supreme Court ruled that there was no such unfair labor practice committed. In the first place, the complaint for unfair labor practice was instituted against the wishes of workers who are members of the local union whose interests it was supposedly protecting. In the second place, the disaffiliation was held valid and, therefore, the federation ceases to have any personality to represent the local union in the CBA negotiation. The complaint for unfair labor practice lodged by the federation against the employer, the local union and their respective officers, having been filed by a party which has no legal personality to institute the complaint, should have been dismissed at the first instance for failure to state a cause of action.

As far as the employer is concerned, it is entirely reasonable for it to enter into a CBA with the local union which is now affiliated with a new federation. As the local union had validly severed itself from the old federation, there would be no restrictions which could validly hinder it from subsequently affiliating with the new federation and entering into a CBA in behalf of its members.

**89. Is disaffiliation a violation of union security clause?**

In **Tropical Hut Employees Union - CGW, vs. Tropical Hut Food Market, Inc.**, [G. R. No. L-43495-99, Jan. 20, 1990], it was pronounced that the union security clause in the CBA cannot be used to justify the dismissal of the employees who voted for the disaffiliation of the local union from the federation. More so in a case where the CBA imposes dismissal only in case employees are expelled from the union for their act of joining another federation or for forming another union or if they failed or refused to maintain membership therein. However, in a situation where it does not involve the withdrawal of merely some employees from the union but the whole union itself withdraws from the federation with which it was affiliated, there can be no violation of the union security clause in the CBA, and consequently, there exists no sufficient basis to terminate the employment of said employees.

**90. What is cancellation proceedings against labor organization or workers' association?**

**"Cancellation Proceedings"** refer to the legal process leading to the revocation of the legitimate status of a union or workers' association. (*Section 1 [g], Rule I, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-03, Series of 2003, [Feb. 17, 2003]*).

Subject to the requirements of notice and due process, the registration of any legitimate independent labor union, chartered local and workers' association may be cancelled by the Regional Director, or in the case of federations, national or industry unions and trade union centers, by the Bureau Director, upon the filing of an independent complaint or petition for cancellation. (*Section 1, Rule XIV, Book V, Ibid.*).

The cancellation of a certificate of registration is the equivalent of snuffing out the *life* of a labor organization. For without such registration, it loses - as a rule - its rights under the Labor Code. The union is indisputably entitled to be heard before a judgment could be rendered canceling its certificate of registration. In *David vs. Aguilizan*, [94 SCRA 707, 713-714 (December 14, 1979)], it was held that a decision rendered without any hearing is null and void. (*Alliance of Democratic Free Labor Organization [ADFLO] vs. Laguesma, G. R. No. 108625, March 11, 1996*).

**91. What is the effect of filing or pendency of a cancellation proceeding?**

The filing or initiation of a cancellation proceeding against a labor organization does not have the effect of depriving it of the rights accorded to a legitimate labor organization. For as long as there is no final order of cancellation, the labor organization whose registration is sought to be cancelled shall continue to enjoy said rights. The pendency alone of cancellation proceedings does not affect the right of a labor organization to sue. (*Itogon-Suyoc Mines vs. Sangilo-Itogon Workers Union, 24 SCRA 873*).

Such pendency cannot also bar the conduct of a certification election. (*Samahan ng Manggagawa sa Pacific Plastic vs. Laguesma, G. R. No. 111245, Jan. 31, 199*).

**92. What is the effect of cancellation during the pendency of a case?**

In case cancellation of a union registration is made during the pendency of a case, the labor organization whose registration is cancelled may still continue to be a party to the case without necessity for substitution. Whatever decision, however, may be rendered therein shall only be binding on those members of the union who have not signified their desire to withdraw from the case before its trial and decision on the merits. (*Itogon-Suyoc Mines, Inc. vs. Sangilo-Itogon Workers Union, 24 SCRA 873*).

The non-renewal of registration or permit does not result in the dismissal of a case pending with the Department of Labor and Employment. The reason is that, at the time of the filing of the case, it has juridical personality and the respondent court had validly acquired jurisdiction over the case. (*Philippine Land-Air-Sea Labor Union [PLASLU], Inc. vs. CIR, 93 Phil. 47*).

**93. May registration of a labor organization be cancelled due to non-compliance with reportorial requirements?**

Where a registered labor organization in the private sector failed to submit the reports required under *Rule V [Reporting Requirements of Labor Unions and Workers' Associations], Book V of the Rules to Implement the Labor Code, as amended*, for **five (5) consecutive years** despite notices for compliance sent by the Labor Relations Division or the Bureau of Labor Relations, the latter may cause the institution of the administrative process for cancellation of its registration, upon its own initiative or upon complaint filed by any party-in-interest. (*Section 1, Rule XV, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-03, Series of 2003, [Feb. 17, 2003]*).

No registration of labor organization, however, shall be cancelled administratively by the Bureau of Labor Relations due to non-compliance with the reportorial requirements unless:

- (a) non-compliance is for a continuous period of five (5) years;
- (b) the procedures laid down in the *Implementing Rules* were complied with; and
- (c) the labor organization concerned has not responded to any of the notices sent by the Bureau, or its notices were returned unclaimed. (*Section 5, Rule XV, Book V, Ibid.*).

## CERTIFICATION ELECTION & REPRESENTATION ISSUES

**94. What is meant by “sole and exclusive bargaining agent”?**

The term “*sole and exclusive bargaining agent*” refers to any legitimate labor organization duly recognized or certified as the sole and exclusive bargaining agent of all the employees in a bargaining unit.

**95. Exclusive bargaining representative; how determined.**

Four (4) ways of determining a bargaining agent:

1. **voluntary recognition** in cases where there is only one legitimate labor organization operating within the bargaining unit; or
2. **certification election**; or
3. **run-off election**; or
4. **consent election**.

**96. Definition of terms.**

**Voluntary recognition of union.** - Voluntary recognition of bargaining agent is the free and voluntary act of the employer of extending and conferring full recognition to a union as the

sole and exclusive bargaining representative of the employees in an appropriate bargaining unit, for purposes of collective bargaining. This is allowed when there is only one union operating in the bargaining unit.

**Certification election.** - refers to the process of determining through secret ballot the sole and exclusive bargaining representative of the employees in an appropriate bargaining unit, for purposes of collective bargaining.

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

**Consent election.** - refers to the election voluntarily agreed upon by the parties, with or without the intervention of the Department of Labor and Employment, to determine the issue of majority representation of all the workers in the appropriate collective bargaining unit.

**97. What is the distinction between consent election and certification election?**

Consent election is a separate and distinct process and has nothing to do with the import and effort of a certification election in the sense that the purpose of the latter is to determine the sole and exclusive bargaining agent of all the employees in the bargaining unit.

**98. Is direct certification allowed?**

Direct certification of union is not allowed.

**99. What is a bargaining unit?**

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

**100. Bargaining unit, how determined.**

There are no specific criteria under the law but any of the following four (4) modes may be used:

1. **Substantial mutual interests principle or community or mutuality of interests rule**
2. **Globe doctrine** [will of the employees].
3. **Collective bargaining history.**
4. **Employment status.**

Under the *substantial mutual interests rule*, the employees sought to be represented by the collective bargaining agent must have substantial mutual interests in terms of employment and working conditions as evinced by the type of work they perform. It is characterized by similarity of employment status, same duties and responsibilities and substantially similar compensation and working conditions. (*San Miguel Corporation Employees Union-PTGWO vs. Confesor*, G. R. No. 111262, Sept. 19, 1996, 262 SCRA 81, 98).

Since it is impossible for all employees in one company to perform exactly the same work, there should be a logical basis for the formation of the bargaining unit. Certainly, in one company, it is highly fragmentitious for typists and clerks to organize one bargaining unit, janitors, another unit, accountants, another unit, messengers, another unit, and so on. There is commonality of interest among them - which is the progress of their company and their desire to share equitably in the profits or fruits of their endeavors. On the part of the company, they are all needed and important for its continued existence and smooth operations. (*Philtranco Service Enterprises vs. Bureau of Labor Relations*, G. R. No. 85343, June 28, 1989).

In the case of **San Miguel Corporation vs. Laguesma**, [G. R. No. 100485, September 21, 1994], the Supreme Court applied this principle in a petition of the union which seeks to represent the sales personnel in the various Magnolia sales offices in Northern Luzon, contrary to

the position taken by the company that each sales office consists of one bargaining unit. Said the Court: “What greatly militates against this position (of the company) is the *meager number of sales personnel in each of the Magnolia sales office in Northern Luzon*. Even the bargaining unit sought to be represented by respondent union in the entire North Luzon sales area consists only of approximately *fifty-five (55) employees*. Surely, it would not be for the best interests of these employees if they would further be fractionalized. The adage ‘*there is strength in number*’ is the very rationale underlying the formation of a labor union.”

In another case involving the same company, **San Miguel Corporation Supervisors and Exempt Employees Union vs. Laguesma**, [G. R. No. 110399, August 15, 1997, 277 SCRA 370, 380-381], the fact that the three plants comprising the bargaining unit are located in three different places, namely, in Cabuyao, Laguna, in Otis, Pandacan, Metro Manila, and in San Fernando, Pampanga was declared immaterial. Geographical location can be completely disregarded if the communal or mutual interests of the employees are not sacrificed as demonstrated in **University of the Philippines vs. Ferrer-Calleja**, [211 SCRA 451 (1992)], where all non-academic rank-and-file employees of the University of the Philippines in Diliman, Quezon City, Padre Faura, Manila, Los Banos, Laguna and the Visayas were allowed to participate in a certification election. The distance among the three plants is not productive of insurmountable difficulties in the administration of union affairs. Neither are there regional differences that are likely to impede the operations of a single bargaining representative.

In **Alhambra Cigar and Cigarette Manufacturing Co., vs. Alhambra Employees Association-PAFLU**, [G. R. No. L-13573, Feb. 20, 1969], employees in the administrative, sales and dispensary departments perform work which have nothing to do with production and maintenance, hence, it was held that they can form their own bargaining unit separate and distinct from those involved in the production and maintenance such as those employed in the raw leaf, cigar, cigarette, packing, engineering and maintenance departments.

But in the case of employees of two (2) companies, a different legal principle applies. Although the businesses of two companies are related and the employees of one were originally the employees of the other, the employees of both companies cannot be treated as one bargaining unit because they are employed by two separate and distinct entities. (*Diatagon Labor Federation Local 110 of the ULGWP vs. Ople*, G. R. Nos. L-44493-94, Dec. 3, 1980, 101 SCRA 534; *Indophil Textile Mill Workers Union-PTGWO vs. Calica*, G. R. No. 96490, Feb. 3, 1992).

In a case involving a film outfit, **LVN Pictures, Inc. vs. Philippine Musicians Guild**, [1 SCRA 132 (1961)], it was pronounced following the *substantial mutual interests* test, that there is substantial difference between the work performed by musicians and that of other persons who participate in the production of a film which suffices to show that they constitute a proper bargaining unit.

In **Cruzvale, Inc. vs. Laguesma**, [G. R. No. 107610, Nov. 25, 1994], it was ruled that there is no commonality of interest between the employees in the garment factory and cinema business. Thus, their separation into two (2) distinct bargaining units was declared proper.

Also, in **Golden Farms, Inc. vs. The Honorable Secretary of Labor**, [G. R. No. 102130, July 26, 1994], the dissimilarity of interests between monthly-paid and daily-paid workers - where the former primarily perform administrative or clerical work; while the latter mainly work in the cultivation of bananas in the field – was held proper basis for the formation of a separate and distinct bargaining unit for the monthly-paid rank-and-file employees.

The *Globe doctrine [will of the employees]* is was enunciated in the United States case of *Globe Machine and Stamping Co.*, [3 NLRB 294 (1937)] where it was ruled, in defining the appropriate bargaining unit, that in a case where the company’s production workers can be considered either as a single bargaining unit appropriate for purposes of collective bargaining or, as three (3) separate and distinct bargaining units, the determining factor is the desire of the workers themselves. Consequently, a certification election should be held separately to choose which representative union will be chosen by the workers. (*See also Mechanical Department Labor Union sa Philippine National Railways vs. CIR*, G. R. No. L-28223, Aug. 30, 1968).

In the case of **International School Alliance of Educators [ISAE] vs. Quisumbing**, [G. R. No. 128845, June 1, 2000], the Supreme Court ruled that foreign-hired teachers do not belong

to the same bargaining unit as the local-hires because the former have not indicated their intention to be grouped with the latter for purposes of collective bargaining. Moreover, the collective bargaining history of the school also shows that these groups were always treated separately.

The principle called *collective bargaining history* enunciates that the prior collective bargaining history and affinity of the employees should be considered in determining the appropriate bargaining unit. However, the Supreme Court has categorically ruled that the existence of a prior collective bargaining history is *neither decisive nor conclusive* in the determination of what constitutes an appropriate bargaining unit. (*San Miguel Corporation vs. Laguesma, infra*; *National Association of Free Trade Unions vs. Mainit Lumber Development Company Workers Union, infra*).

For instance, the Supreme Court in **National Association of Free Trade Unions vs. Mainit Lumber Development Company Workers Union**, [G. R. No. 79526, Dec. 21, 1990], declared that there is mutuality of interest among the workers in the sawmill division and logging division as to justify their formation of a single bargaining unit. This, despite the history of said two divisions being treated as separate units and notwithstanding their geographical distance.

And in another case, *San Miguel Corporation vs. Laguesma*, [G. R. No. 100485, Sept. 21, 1994], despite the collective bargaining history of having a separate bargaining unit for each sales office, the Supreme Court applied the *principle of mutuality or commonality of interests* in holding that the appropriate bargaining unit is comprised of all the sales force in the whole of North Luzon.

Under the doctrine of *employment status*, the determination of appropriate bargaining unit based thereon is considered an acceptable mode. (*Rothenberg on Labor Relations, pp. 482-510*).

For instance, casual employees and those being employed on a day-to-day basis, according to the Supreme Court in *Philippine Land-Air-Sea Labor Union vs. CIR*, [G. R. No. L-14656, Nov. 29, 1960], do not have the mutuality or community of interest with regular and permanent employees. Hence, their inclusion in the bargaining unit composed of the latter employees is not justified.

Confidential employees, by the very nature of their functions, assist and act in a confidential capacity to, or have access to confidential matters of, persons who exercise managerial functions in the field of labor relations. As such, the rationale behind the ineligibility of managerial employees to form, assist or join a labor union equally applies to them. Hence, they cannot be allowed to be included in the rank-and-file bargaining unit. (*Philips Industrial Development, Inc. vs. NLRC, G. R. No. 88957, June 25, 1992*; *Golden Farms, Inc. vs. Ferrer-Calleja, G. R. No. 78755, July 19, 1989, 175 SCRA 471*).

The rationale for this inhibition is if these managerial employees would belong to or be affiliated with a union, the latter might not be assured of their loyalty to the union in view of evident conflict of interest. The union can also become company-dominated with the presence of managerial employees in union membership. (*Bulletin Publishing Co., vs. Sanchez, 144 SCRA 628*).

In **Belyca Corporation vs. Ferrer-Calleja**, [G. R. No. 77395, Nov. 29, 1988], which involves a corporation engaged in piggery, poultry raising, planting of agricultural crops and operation of supermarkets and cinemas, the Supreme Court ruled that it is beyond question that the employees of the livestock and agro division of the corporation perform work entirely different from those performed by employees in the supermarkets and cinemas. Among others, the noted differences are: their working conditions, hours of work, rates of pay, including the categories of their positions and employment status. As stated by petitioner corporation in its position paper, due to the nature of the business in which its livestock-agro division is engaged, very few of its employees in the division are permanent, the overwhelming majority of which are seasonal and casual and not regular employees. Definitely, they have very little in common with the employees of the supermarkets and cinemas. To lump all the employees of petitioner in its integrated business concerns cannot result in an efficacious bargaining unit comprised of constituents enjoying a community or mutuality of interest. Undeniably, the rank-and-file employees of the livestock-agro division fully constitute a bargaining unit that satisfies both requirements of classification according to employment status and of the substantial similarity of

work and duties which will ultimately assure its members the exercise of their collective bargaining rights. (See also *Democratic Labor Association vs. Cebu Stevedoring*, 103 Phil. 1103).

***Application of foregoing 4 factors in one case.***

As earlier mentioned, in the case of **International School Alliance of Educators [ISAE] vs. Quisumbing**, [G. R. No. 128845, June 1, 2000], the Supreme Court disallowed the inclusion of foreign-hired teachers in the bargaining unit composed of locally-hired teachers. In so holding, it used all the four (4) factors mentioned above, thus:

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

**101. What is the effect on the bargaining unit of spin-off of business?**

The employer may validly effect a spin-off of some of its divisions to operate as distinct companies. Such transformation of the companies is a management prerogative and business judgment which the courts cannot look into unless it is contrary to law, public policy or morals.

In one case involving the spin-off by a corporation of two of its divisions, the Supreme Court declared that after the said spin-off, they became distinct entities with separate juridical personalities. Thus, the employees cannot belong to a single bargaining unit as held in the case of *Diatagon Labor Federation Local 110 of the ULGWP vs. Ople*, [101 SCRA 534 (1980)].

Considering the spin-offs, the companies would consequently have their respective and distinctive concerns in terms of the nature of work, wages, hours of work, and other conditions of employment. Interests of employees in the different companies perforce differ. (*San Miguel Corporation Employees Union-PTGWO vs. Confesor*, G. R. No. 111262, Sept. 19, 1996, 262 SCRA 81; See also *Borbon vs. Laguesma*, G. R. No. 101766, March 5, 1993).

**102. May excluded employees be included in the bargaining unit under the new CBA.**

In **De la Salle University vs. De la Salle University Employees Association**, [G. R. No. 109002, April 12, 2000], it was held that the express exclusion of certain employees from the bargaining unit of rank-and-file employees in the past CBA does not bar any re-negotiation for the future inclusion of the said employees in the bargaining unit. During the freedom period, the parties may not only renew the existing CBA but may also propose and discuss modifications or amendments thereto. More so in this case where, after a careful consideration of the pleadings filed, the alleged confidential nature of the said employees' functions (as computer operator and discipline officers) were proven to be incorrect. As carefully examined by the Solicitor General, the service record of a computer operator reveals that his duties are basically clerical and non-confidential in nature. As to the discipline officers, based on the nature of their duties, they are not confidential employees and should, therefore, be included in the bargaining unit of rank-and-file employees.

**103. May employees of one entity join the union in another entity?**

In the same case of **De la Salle** [supra], the Supreme Court affirmed the findings of the Voluntary Arbitrator that the employees of the College of St. Benilde should be excluded from the bargaining unit of the rank-and-file employees of De la Salle University, because the two educational institutions have their own separate juridical personality and no sufficient evidence was shown to justify the piercing of the veil of corporate fiction.

**104. What are the requisites for certification election in organized establishments?**

The following are the requisites for certification election in organized establishments.

1. that a petition questioning the majority status of the incumbent bargaining agent is filed before the DOLE within the 60-day freedom period;
2. that such petition is verified; and
3. that the petition is supported by the written consent of at least **twenty-five percent (25%)** of all employees in the bargaining unit.

**105. What is the requirement for certification election in unorganized establishments?**

In *unorganized establishments*, certification election shall be "*automatically*" conducted upon the filing of a petition for certification election by a legitimate labor organization. However, it must be emphasized that the petitioner-union should have a valid certificate of registration; otherwise, it has no legal personality to file the petition for certification election.

**106. Who may file petition for certification election?**

A petition for certification election may be filed by:

1. a **legitimate labor organization**; or
2. an **employer**, but *only* when requested by a labor organization to bargain collectively and the status of the union is in doubt.

**107. When to file petition for certification election; general rule.**

The **general rule** is, in the absence of a collective bargaining agreement duly registered in accordance with Article 231 of the Labor Code, a petition for certification election may be filed *at any time*.

**108. What are the exceptions to the general rule?**

The exceptions when no certification election may be held are as follows:

1. **certification year-bar** rule;
2. **bargaining deadlock-bar** rule; or
3. **contract-bar** rule.

**109. What is certification year-bar rule?**

Under the **certification year-bar rule**, a certification election petition may not be filed within one (1) year: **(1)** from the date of a valid certification, consent or run-off election; or **(2)** from the date of voluntary recognition.

**110. What is bargaining deadlock-bar rule?**

Under the **bargaining deadlock-bar rule**, neither may a representation question be entertained if:

1. *before* the filing of a petition for certification election, the duly recognized or certified union has commenced negotiations with the employer **within the one-year period** from the date of a valid certification, consent or run-off election or from the date of voluntary recognition; or
2. a **bargaining deadlock** to which an incumbent or certified bargaining agent is a party had been submitted to conciliation or arbitration or had become the subject of valid notice of strike or lockout.

In the case of **Kaisahan ng Manggagawang Pilipino [KAMPIL-KATIPUNAN] vs. Trajano**, [G. R. No. 75810, September 9, 1991, 201 SCRA 453 (1991)], the *bargaining deadlock-bar* rule was not applied because the duly certified exclusive bargaining agent of all

rank-and-file employees did not, for more than four (4) years, take any action to legally compel the employer to comply with its duty to bargain collectively, hence, no CBA was executed; nor did it file any unfair labor practice suit against the employer or initiate a strike against the latter. Under the circumstances, a certification election may be validly held.

But in the case of **Capitol Medical Center Alliance of Concerned Employees-Unified Filipino Service Workers vs. Laguesma**, [G. R. No. 118915, February 4, 1997, 267 SCRA 503], whose factual milieu is similar to said case of *Kaisahan*, the *bargaining deadlock-bar* rule was applied. The Supreme Court ratiocinated, thus:

“This is what is strikingly different between the *Kaisahan* case and the case at bench for in the latter case, there was proof that the certified bargaining agent, respondent union, had taken an action to legally coerce the employer to comply with its statutory duty to bargain collectively, *i.e.*, charging the employer with unfair labor practice and conducting a strike in protest against the employer’s refusal to bargain. It is only just and equitable that the circumstances in this case should be considered as similar in nature to a ‘bargaining deadlock’ when no certification election could be held. This is also to make sure that no floodgates will be opened for the circumvention of the law by unscrupulous employers to prevent any certified bargaining agent from negotiating a CBA. Thus, Section 3, Rule V, Book V of the Implementing Rules should be interpreted liberally so as to include a circumstance, *e.g.*, where a CBA could not be concluded due to the failure of one party to willingly perform its duty to bargain collectively.”

#### **111. What is a contract-bar rule?**

Under the **contract-bar rule**, the Bureau of Labor Relations shall not entertain any petition for certification election or any other action which may disturb the administration of duly registered existing collective bargaining agreements affecting the parties. The reasons are:

#### **112. What are the exceptions to the contract-bar rule?**

The exceptions to the contract-bar rule are as follows:

1. during the 60-day freedom period;
2. when the CBA is not registered with the BLR or DOLE Regional Offices;
3. when the CBA, although registered, contains provisions lower than the standards fixed by law;
4. when the documents supporting its registration are falsified, fraudulent or tainted with misrepresentation;
5. when the collective bargaining agreement is not complete as it does not contain any of the requisite provisions which the law requires;
6. when the collective bargaining agreement was entered into prior to the 60-day freedom period;
7. when there is a schism in the union resulting in an industrial dispute wherein the collective bargaining agreement can no longer foster industrial peace.

## **COLLECTIVE BARGAINING AGREEMENT (CBA)**

#### **113. What is a Collective Bargaining Agreement (CBA)?**

**Collective Bargaining Agreement (CBA)** refers to the negotiated contract between a legitimate labor organization and the employer concerning wages, hours of work and all other terms and conditions of employment in a bargaining unit. The CBA is deemed the law between the parties during its lifetime. Its provisions are construed liberally.

#### **114. What are the legal principles applicable to Collective Bargaining Agreement (CBA)?**

- A proposal not embodied in CBA is not part thereof.

- Minutes of CBA negotiation - no effect if its contents are not incorporated in the CBA.
- Making a promise during the CBA negotiation is not considered bad faith.
- Adamant stance resulting in impasse, not bad faith.
- The DOLE Secretary cannot order inclusion of terms and conditions in CBA which the law and the parties did not intend to reflect therein.
- Signing bonus, not demandable under the law.
- Allegations of bad faith, wiped out with signing of CBA.

**115. Is the collective bargaining procedure in Article 250 mandatory?**

In **National Union of Restaurant Workers vs. CIR**, [10 SCRA 843], it was held that failure to reply within ten (10) calendar days does not constitute refusal to bargain. The requirement under the law that a party should give its reply within said period is merely procedural and non-compliance therewith is not unfair labor practice.

Recently, however, there has been a shift in the interpretation of the provision of Article 250. According to the pronouncement in **General Milling Corporation vs. CA**, [G. R. No. 146728, February 11, 2004], the procedure in collective bargaining prescribed by the Labor Code under Article 250 is mandatory because of the basic interest of the State in ensuring lasting industrial peace. It underscored the fact that the other party upon whom the proposals was served “shall make a reply thereto not later than ten (10) calendar days from receipt of such notice.” Consequently, the employer’s failure to make a timely reply to the proposals presented by the union is indicative of its bad faith and utter lack of interest in bargaining with the union. Its excuse that it felt the union no longer represented the workers, was mainly dilatory as it turned out to be utterly baseless. Consequently, the employer in this case was held guilty of unfair labor practice under Article 248 [g] of the Labor Code.

In **Colegio de San Juan de Letran vs. Association of Employees and Faculty of Letran**, [G. R. No. 141471, September 18, 2000], petitioner-school was declared to have acted in bad faith because of its failure to make a timely reply to the proposals presented by the union. More than a month after the proposals were submitted by the union, petitioner still had not made any counter-proposals. This inaction on the part of petitioner prompted the union to file its second notice of strike on March 13, 1996. Petitioner could only offer a feeble explanation that the Board of Trustees had not yet convened to discuss the matter as its excuse for failing to file its reply. This is a clear violation of Article 250 of the Labor Code governing the procedure in collective bargaining. The school’s refusal to make a counter-proposal to the union’s proposed CBA is an indication of its bad faith. Its actuation shows a lack of sincere desire to negotiate rendering it guilty of unfair labor practice.

The same holding was made in **Kiok Loy vs. NLRC**, [141 SCRA 179, 186 (1986)] where the company’s refusal to make any counter-proposal to the union’s proposed CBA was declared as an indication of its bad faith. Where the employer did not even bother to submit an answer to the bargaining proposals of the union, there is a clear evasion of the duty to bargain collectively. (See also *The Bradman Co., Inc. vs. Court of Industrial Relations*, 78 SCRA 10, 15 [1977]).

**116. What are the kinds of bargaining under the latest implementing rules?**

The *Rules to Implement the Labor Code*, as amended in 2003, provide for two (2) kinds of bargaining, namely:

1. Single-enterprise bargaining; and
2. Multi-employer bargaining.

**117. What is single enterprise bargaining?**

*Single-enterprise bargaining* involves negotiation between one certified labor union and one employer. Any voluntarily recognized or certified labor union may demand negotiations with its employer for terms and conditions of work covering employees in the bargaining unit concerned. (Section 3, Rule XVI, Book V, *Rules to Implement the Labor Code*, as amended by Department Order No. 40-03, Series of 2003, [Feb. 17, 2003]).

**118. What is multi-employer bargaining?**

*Multi-employer bargaining* involves negotiation between and among several certified labor unions and employers.

Any legitimate labor unions and employers may agree in writing to come together for the purpose of collective bargaining, provided:

- (a) only legitimate labor unions which are incumbent exclusive bargaining agents may participate and negotiate in multi-employer bargaining;
- (b) only employers with counterpart legitimate labor unions which are incumbent bargaining agents may participate and negotiate in multi-employer bargaining; and
- (c) only those legitimate labor unions which pertain to employer units which consent to multi-employer bargaining may participate in multi-employer bargaining. (*Section 5, Rule XVI, Book V, Ibid.*).

**119. What is meant by “duty to bargain collectively” when there has yet been a CBA?**

Article 251 contemplates a situation where there is yet no CBA or other voluntary arrangements or modes providing for a more expeditious manner of collective bargaining. Accordingly, the law itself mandates that the procedures in collective bargaining laid down in the Labor Code, specifically Article 250 thereof, among other pertinent provisions, should be followed by the employer and the representatives of the employees in their collective bargaining efforts. Essentially, the duty to bargain in this situation still requires the performance of the obligation by the employer and the union to meet, convene and confer for collective bargaining purposes. The basic requisites of collective bargaining such as the existence of employer-employee relationship, majority status of the bargaining union and the demand to negotiate an agreement, should likewise be fully satisfied before such negotiations may be validly held. The advantage of negotiating a CBA for the first time lies in the fact that both parties are not restricted or encumbered by any previous agreement on any of the issues that may be raised in the course thereof. They are free to take positions on anything, without having to worry about possible past agreements affecting the current ones for discussion.

**120. What is meant by “duty to bargain collectively” when there exists a CBA?**

When there is a collective bargaining agreement, the duty to bargain collectively shall mean that *neither party shall terminate nor modify such agreement during its lifetime*. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the *status quo* and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties.

**121. What are the mandatory requisites of publication, ratification and registration of the CBA?****a. Posting of CBA.**

The general rule is that the CBA is required to be posted in two (2) conspicuous places in the work premises, for a period of at least five (5) days prior to its ratification.

In the case of multi-employer bargaining, two (2) signed copies of the CBA should be posted for at least five (5) days in two (2) conspicuous areas in each workplace of the employer units concerned. Said CBA shall affect only those employees in the bargaining units who have ratified it. (*Section 7, Rule XVI, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-03, Series of 2003, [Feb. 17, 2003]*).

**b. Posting is mandatory.**

This requirement on the posting of the CBA as above-described is considered a mandatory requirement. Non-compliance therewith will render the CBA ineffective. (*Associated Trade Unions [ATU] vs. Trajano, G. R. No. L-75321, June 20, 1988*).

**c. Posting is responsibility of employer.**

The posting of copies of the CBA is the responsibility of the employer which can easily comply with the requirement through a mere mechanical act. (*Associated Labor Union [ALU] vs. Ferrer-Calleja, G. R. No. 77282, May 5, 1989*).

**d. Ratification by majority of the members of the bargaining unit.**

The ratification of the CBA should be made not by the majority of the members of the bargaining union but by the majority of the members of the bargaining unit which is being represented by the bargaining union in the negotiations.

**e. Registration of CBA.**

The CBA shall be registered with the Department of Labor and Employment in accordance with the *Rules to Implement the Labor Code*, as amended in 2003. (*Section 7, Rule XVI, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-03, Series of 2003, [Feb. 17, 2003]*).

**122. What is the consequence of refusal of party to negotiate the CBA?**

The refusal of the employer to bargain with the collective bargaining representative, by ignoring all notices for negotiations and requests for counter-proposals so much so that the union had to resort to conciliation proceedings, may indicate bad faith. (*Kiok Loy vs. NLRC, G. R. No. 54334, Jan. 22, 1986, 141 SCRA 179*).

For refusing to send a counter-proposal to the union and to bargain anew on the economic terms of the CBA, the company commits an unfair labor practice act under Article 248 [g] of the Labor Code (violation of the duty bargain collectively). As held in **General Milling Corporation vs. CA**, [G. R. No. 146728, Feb. 11, 2004], the union lived up to this obligation when it presented proposals for a new CBA to the management within three (3) years from the effectivity of the original CBA. But the employer failed in its duty under Article 252. What it did was to devise a flimsy excuse, by questioning the existence of the union and the status of its membership to prevent any negotiation.

According to **Colegio De San Juan De Letran vs. Association of Employees and Faculty of Letran**, [G.R. No. 141471, Sept. 18, 2000, 340 SCRA 587, 595], the management's refusal to make a counter-proposal to the union's proposal for CBA negotiation is an indication of its bad faith. Where the employer did not even bother to submit an answer to the bargaining proposals of the union, there is a clear evasion of the duty to bargain collectively.

**123. What is the effect of the refusal of party to sign the CBA?**

A party to a fully-concluded CBA may be compelled to sign it, especially if said refusal to sign is the only remaining hitch to its being implemented. Such refusal is considered unfair labor practice. (*Roadway Express vs. General Teamster, 320 F 2d, 859*).

**124. What is the effect if there is no meeting of the minds?**

In **University of the Immaculate Concepcion, Inc. vs. The Hon. Secretary of Labor and Employment**, [G. R. No. 146291, January 23, 2002], the petitioner presented to the union a draft of the CBA allegedly embodying all the terms and conditions agreed upon during the conciliation sessions held by the NCMB. Petitioner contended that the union was bound to comply with the terms contained in the draft-CBA since said draft allegedly contains all the items already agreed upon before the NCMB. The Supreme Court disagreed. In affirming the finding of the Court of Appeals that there was still no new CBA because the parties had not reached a meeting of the minds, the Supreme Court ratiocinated, thusly:

“As in all other contracts, there must be clear indications that the parties reached a meeting of the minds.

“In this case, no CBA could be concluded because of what the union perceived as illegal deductions from the 70% employees' share in the tuition fee

increase from which the salary increases shall be charged. Also, the manner of computing the net incremental proceeds was yet to be agreed upon by the parties.

“Petitioner insisted that a new collective bargaining agreement was concluded through the conciliation proceeding before the NCMB on all issues specified in the notice of strike. Although it is true that the university and the union may have reached an agreement on the issues raised during the collective bargaining negotiations, still no agreement was concluded by them because, among other reasons, the DOLE Secretary, who assumed jurisdiction on January 23, 1995 only was set to resolve the distribution of the salary increase of the covered employees. The Court of Appeals found that ‘there are many items in the draft-CBA that were not even mentioned in the minutes of the July 20, 1994 conference.’

“Considering the parties failed to reach an agreement regarding certain items of the CBA, they still have the duty to negotiate a new collective bargaining agreement in good faith, pursuant to the applicable provisions of the Labor Code.”

**125. Can a CBA be negotiated and concluded during suspension of operation?**

There is no legal basis to claim that a new CBA should not be entered into or that collective bargaining should not be conducted during the effectivity of a temporary suspension of operations which an employer can lawfully do under Article 286 of the Labor Code. In the absence of any other information, the plain and natural presumption is that the employer would resume operations after six (6) months and, therefore, it follows that a new CBA will be needed to govern the employment relations of the parties, the old one having already expired.

Consequently, it was held in **San Pedro Hospital of Digos, Inc. vs. Secretary of Labor**, [G. R. No. 104624, Oct. 11, 1996, 263 SCRA 98], that while the employer cannot be forced to abandon its suspension of operations even if said suspension be declared unjustified, illegal and invalid, neither can the employer evade its obligation to bargain with the union, using the cessation of its business as reason therefor. For, as already indicated above, the employer-employee relationship is merely suspended (and not terminated) for the duration of the temporary suspension. Using the suspension as an excuse to evade the duty to bargain is further proof of its illegality. It shows abuse of this option and bad faith on the part of the employer. And since it refused to bargain without valid and sufficient cause, the DOLE Secretary, in the exercise of his powers under Article 263 [i] of the Labor Code to decide and resolve labor disputes, properly granted the wage increase and imposed the union shop provision.

**126. Can a CBA be negotiated and concluded in case of closure of business?**

An employer which has already decided to close shop cannot be compelled to enter into a new CBA. The Supreme Court said in the same case of **San Pedro Hospital** [supra] that it cannot impose upon the employer the directive to enter into a new CBA with the union for the very simple reason that to do so would be to compel the employer to continue its business when it had already decided to close shop, and that would be judicial tyranny on its part.

**127. Can a CBA proposed by the union be imposed lock, stock and barrel on employer who refused to negotiate a CBA?**

The Supreme Court, following the provision of Article 253 which imposes on both parties to *keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement* during the 60-day period [prior to its expiration date] and/or *until a new agreement is reached by the parties*, has lately consistently ruled that the CBA, as proposed by the union, may be unilaterally imposed on the employer in the event the latter fails to discharge its duty to bargain collectively by refusing to make any counter-proposals to the proposals of the union or engaging in bad faith bargaining.

Article 253 basically mandates the parties to keep the *status quo* while they are still in the process of working out their respective proposals and counter proposals. The general rule is that

when a CBA already exists, its provision shall continue to govern the relationship between the parties until a new one is agreed upon. The rule necessarily presupposes that all other things are equal. That is, that neither party is guilty of bad faith. However, when one of the parties abuses this grace period by purposely delaying the bargaining process, a departure from the general rule is warranted.

Under this situation, the employer which violates the duty to bargain collectively, loses its statutory right to negotiate or renegotiate the terms and conditions of the draft CBA proposed by the union. Hence, the proposals of the union may be adopted as the CBA and, consequently, imposed on the employer, lock, stock and barrel.

***General Milling Corporation vs. CA.***

In **General Milling Corporation vs. CA**, [G. R. No. 146728, Feb. 11, 2004], the Supreme Court imposed on the employer the draft CBA proposed by the union for two years commencing from the expiration of the original CBA. This was because of the employer's refusal to counter-propose to the union's proposals which constitutes unfair labor practice under Article 248 [g] of the Labor Code.

***Kiok Loy vs. NLRC.***

In the case of **Kiok Loy vs. NLRC**, [No. L-54334, January 22, 1986, 141 SCRA 179, 188], the Supreme Court found that petitioner therein, Sweden Ice Cream Plant, refused to submit any counter proposal to the CBA proposed by its employees' certified bargaining agent. It ruled that the former had thereby lost its right to bargain the terms and conditions of the CBA. Thus, the High Court did not hesitate to impose on the erring company the CBA proposed by its employees' union - lock, stock and barrel.

***Divine Word University of Tacloban vs. Secretary of Labor and Employment.***

Likewise, in **Divine Word University of Tacloban vs. Secretary of Labor and Employment**, [213 SCRA 759, September 11, 1992], petitioner therein refused to perform its duty to bargain collectively. Thus, the High Tribunal upheld the unilateral imposition on the university of the CBA proposed by the Divine Word University Employees Union.

***Distinction between the aforesaid cases, disregarded.***

As strictly distinguished from the facts of *General Milling* [supra], there was no pre-existing CBA between the parties in *Kiok Loy* and *Divine Word University of Tacloban*. Nonetheless, the Supreme Court deemed it proper to apply in *General Milling* the rationale of the doctrine in the said two cases. To rule otherwise, according to the Court, would be to allow *General Milling* to have its cake and eat it, too.

**128. What is "freedom period"?**

**"Freedom period"** is the last sixty (60) days of the lifetime of a collective bargaining agreement immediately *prior* to its expiration. It is so called because it is the only time when the law allows the parties to serve notice to terminate, alter or modify the existing agreement. It is also the time when the majority status of the bargaining union or agent may be challenged by another union by filing appropriate petition for certification election.

**129. What is "automatic renewal clause"?**

**"Automatic renewal clause"** means that at the *expiration* of the freedom period, the employer shall continue to recognize the majority status of the incumbent bargaining agent where no petition for certification election is filed.

**130. What is the effect of CBA renewal or registration before or during 60-day period?**

The representation case shall not be adversely affected by a CBA *registered* before or during the last sixty (60) days of a subsisting agreement or during the pendency of the

representation case. (*Samahan ng Manggagawa sa Pacific Plastic vs. Laguesma, G. R. No. 111245, Jan. 31, 1997, 267 SCRA 303, 310*).

It is well-settled that the sixty-day freedom period based on the original CBA shall not be affected by any *amendment, extension or renewal* of the CBA for purposes of certification election. (*ALU vs. Calleja, 179 SCRA 127 [1989]*).

In the case of **Warren Manufacturing Workers Union [WMWU] vs. Bureau of Labor Relations**, [159 SCRA 387 (1988)], it was held that an agreement prematurely signed by the union and the company during the freedom period does not affect the petition for certification election filed by another union. (*See also Oriental Tin Can Labor Union vs. Secretary of Labor and Employment, G. R. No. 116751, Aug. 28, 1998, 294 SCRA 640*).

The reason is, with a pending petition for certification, any such agreement entered into by management with a labor organization is fraught with the risk that such a labor union may not be chosen thereafter as the collective bargaining representative. Any other view would render nugatory the clear statutory policy to favor certification election as the means of ascertaining the true expression of the will of the workers as to which labor organization would represent them. (*Vassar Industries Employees Union [VIEU] vs. Estrella, No. L-46562, March 31, 1978, 82 SCRA 280, 288; Today's Knitting Free Workers Union vs. Noriel, L-45057, Feb. 28, 1977, 75 SCRA 450*).

### 131. What is the term (lifetime) of a CBA?

**Representation aspect (sole and exclusive status of certified union):** - The term is **5 years** which means that no petition questioning the majority status of the incumbent bargaining agent shall be entertained by DOLE and no certification election shall be conducted outside of the 60-day freedom period.

**All other provisions (which refer to both economic and non-economic provisions except representation):** Shall be renegotiated not later than three (3) years after its execution.

### 132. May CBA negotiations be suspended for 10 years?

Yes. The Supreme Court, in the case of **Rivera vs. Espiritu**. (*G.R. No.135547, January 23, 2002*), ratiocinated, thus:

“The assailed PAL-PALEA agreement was the result of voluntary collective bargaining negotiations undertaken in the light of the severe financial situation faced by the employer, with the peculiar and unique intention of not merely promoting industrial peace at PAL, but preventing the latter's closure. We find no conflict between said agreement and Article 253-A of the Labor Code. Article 253-A has a two-fold purpose. One is to promote industrial stability and predictability . Inasmuch as the agreement sought to promote industrial peace at PAL during its rehabilitation, said agreement satisfies the first purpose of Article 253-A. The other is to assign specific timetables wherein negotiations become a matter of right and requirement. Nothing in Article 253A, prohibits the parties from waiving or suspecting the mandatory timetables and agreeing on the remedies to enforce the same.

“In the instant case, it was PALEA, as the exclusive bargaining agent of PAL 's ground employees, that voluntarily entered into the CBA with PAL. It was also PALEA that voluntarily opted for the 10-year suspension of the CBA. Either case was the union's exercise of its right to collective bargaining. The right to free collective bargaining, after all, includes the right to suspend it.

“The acts of public respondents in sanctioning the 10-year suspension of the PAL-PALEA CBA did not contravene the "protection to labor" policy of the Constitution. The agreement afforded full protection to labor; promoted the shared responsibility between workers and employers; and they exercised voluntary modes in settling disputes, including conciliation to foster industrial peace.”.

### 133. What is meant by “retroactivity” of CBA?

*a. Rule involving CBAs concluded by the parties through negotiation (not concluded through arbitral award).*

1. The collective bargaining agreement or other provisions of such agreement entered into within six (6) months from the date of expiry of the term of such other provisions as fixed in the collective bargaining agreement shall **retroact** to the day immediately following such date.
2. If any such agreement is entered into **beyond** six (6) months, the parties shall agree on the date of effectivity thereof.

*b. Rule involving CBAs concluded through arbitral awards by DOLE Secretary, NLRC or Voluntary Arbitrator (Jurisprudence varies).*

In case of arbitral awards, the retroactivity of the CBA provided under Article 253-A of the Labor Code (enumerated above) has no application. Thus, the Supreme Court ruled:

In **St. Luke's Medical Center, Inc. vs. Torres**, [223 SCRA 779 (1993)], the effectivity date was made retroactive to the date of the expiration of the previous CBA.

In **Pier 8 Arrastre and Stevedoring Services, Inc. vs. Roldan-Confesor**, [241 SCRA 294, 307 (1995)], the effective date of the new CBA should be the date the Secretary of Labor and Employment has resolved the labor dispute.

In **Manila Electric Company vs. Quisumbing**, [G. R. No. 127598, January 27, 1999, 302 SCRA 173, 209], the effectivity date was made prospective per its **January 27, 1999** ruling. Later, per its **February 22, 2000** ruling in the same case which was rendered upon motion for reconsideration, the effectivity of the CBA was made retroactive. But later, in its **August 1, 2000** ruling which was rendered after a Motion for Partial Reconsideration was filed by Meralco, the Supreme Court finally changed the effectivity date thereof. It held that *the arbitral award should retroact to the first day after the six-month period following the expiration of the last day of the CBA, i.e., from June 1, 1996 to May 31, 1998.*

**LATEST RULING:** In the case of **LMG Chemicals Corporation vs. Secretary of DOLE**, (G. R. No. 127422, April 17, 2001), the Supreme Court ruled that retroactivity of CBA in arbitral awards is *subject to the discretion of the DOLE Secretary*

**134. What are the remedies in case of CBA deadlock?**

In case of a deadlock in the negotiation or renegotiation of the collective bargaining agreement, the parties may exercise the following rights under the Labor Code:

1. Conciliation and mediation by the NCMB, DOLE.
2. Declaration of a strike or lockout, as the case may be.
3. Referral of case to compulsory or voluntary arbitration.

## GRIEVANCE AND VOLUNTARY ARBITRATION

**135. What is a grievance?**

**“Grievance”** is 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 violating any provisions of the CBA or company personnel policies. It is a complaint or dissatisfaction arising from the *interpretation or implementation of the CBA* and those arising from *interpretation or enforcement of personnel policies*.

**136. What is grievance machinery?**

**"Grievance machinery"** refers to 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*. It is part of the continuing process of collective bargaining.

**137. What is grievance procedure?**

**"Grievance procedure"** refers to the internal rules of procedure established by the parties in their CBA with **voluntary arbitration** as the *terminal step*, which are intended to resolve all issues arising from the implementation and interpretation of their CBA. It refers to the system of grievance settlement at the plant level as provided in the collective bargaining agreement. It usually consists of successive steps starting at the level of the complainant and his immediate supervisor and ending, when necessary, at the level of the top union and company officials.

All grievances submitted to the grievance machinery which are not settled within seven (7) calendar days from the date of their submission shall automatically be referred to **voluntary arbitration** prescribed in the CBA.

For this purpose, parties to a CBA shall name and designate *in advance* a Voluntary Arbitrator or panel of Voluntary Arbitrators, or include in the agreement a procedure for the selection of such Voluntary Arbitrator or panel of Voluntary Arbitrators, preferably from the listing of qualified Voluntary Arbitrators duly accredited by the NCMB. In case the parties fail to select a Voluntary Arbitrator or panel of Voluntary Arbitrators, the NCMB shall designate the Voluntary Arbitrator or panel of Voluntary Arbitrators, as may be necessary, pursuant to the selection procedure agreed upon in the CBA, which shall act with the same force and effect as if the Arbitrator or panel of Arbitrators has been selected by the parties as described above.

**138. What is voluntary arbitration?**

**"Voluntary arbitration"** refers to 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. (*Section 1 [d], Rule II, NCMB Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings [Oct. 15, 2004]*).

**139. Who is a Voluntary Arbitrator?**

**"Voluntary Arbitrator"** refers to any person who has been accredited by the NCMB as such, or any person named or designated in the CBA by the parties as their Voluntary Arbitrator, or one chosen by the parties with or without the assistance of the Board, pursuant to a selection procedure agreed upon in the CBA or one appointed by the Board in case either of the parties to the CBA refuses to submit to voluntary arbitration. The term includes panel of Voluntary Arbitrators. (*Section 1 [e], Rule II, NCMB Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings [Oct. 15, 2004]*; *See also Article 212 [n], Labor Code; Section 1, Rule I, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-03, Series of 2003, [Feb. 17, 2003]; Section 1 [27], Rule III, NCMB Manual of Procedures for Conciliation and Preventive Mediation Cases*).

A Voluntary Arbitrator is not part of the government or of the Department of Labor and Employment. But he is authorized to render arbitration services provided for under labor laws. (*Ludo & Luym Corporation vs. Saornido, G. R. No. 140960, Jan. 20, 2003*).

Under the *NCMB Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings [October 15, 2004]*, there are two kinds of Voluntary Arbitrators, namely:

1. **"Permanent Arbitrator"** referring to the Voluntary Arbitrator specifically named or designated in the CBA by the parties as their Voluntary Arbitrator; and
2. **"Ad-Hoc Arbitrator"** referring to the Voluntary Arbitrator chosen by the parties in accordance with the established procedures in the CBA or the one appointed by the Board in case there is failure in the selection or in case either of the parties to the CBA refuses to submit to voluntary arbitration.

**140. How is the decision of a Voluntary Arbitrator enforced?**

Under Article 262-A of the Labor Code, upon motion of any interested party, the Voluntary Arbitrator or panel of Voluntary Arbitrators or the Labor Arbiter in the region where the movant resides, in case of the absence or incapacity of the Voluntary Arbitrator or panel of Voluntary Arbitrators, for any reason, may issue a writ of execution requiring either the sheriff of the NLRC or regular courts or any public official whom the parties may designate in the submission agreement to execute the final decision, order or award.

## STRIKES, LOCKOUTS AND PICKETING

**141. What is a strike?**

A **strike** is any temporary stoppage of work by the concerted action of the employees as a result of an industrial or labor dispute. It consists not only of concerted work stoppages but also slowdowns, mass leaves, sitdowns, attempts to damage, destroy or sabotage plant equipment and facilities and similar activities.

**142. What is a lockout?**

A **lockout** is any temporary refusal of an employer to furnish work as a result of an industrial or labor dispute.

**143. What is picketing?**

“*Picketing*” or “*peaceful picketing*” is the right of workers to peacefully march to and fro before an establishment involved in a labor dispute generally accompanied by the carrying and display of signs, placards and banners intended to inform the public about the dispute.

**144. What is an industrial or labor dispute?**

An **industrial or labor dispute** includes any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing maintaining, changing or arranging the terms and conditions of employment, *regardless of whether the disputants stand in the proximate relation of employer and employee.*

**145. What are the various forms of strikes?**

- a. **Legal strike** - one called for a valid purpose and conducted through means allowed by law.
- b. **Illegal strike** - one staged for a purpose not recognized by law, or, if for a valid purpose, conducted through means not sanctioned by law..
- c. **Economic strike** - one declared to demand higher wages, overtime pay, holiday pay, vacation pay, etc. It is one which is declared for the purpose of forcing wage or other concessions from the employer which he is not required by law to grant.
- d. **ULP strike** - one called to protest against the employer’s acts of unfair labor practice enumerated in Article 248 of the Labor Code as amended, including gross violation of the collective bargaining agreement (CBA) and union-busting.
- e. **Slow down strike** - one staged without the workers quitting their work but by merely slackening or by reducing their normal work output.
- f. **Wildcat strike** - one declared and staged without the majority approval of the recognized bargaining agent.
- g. **Sit down strike** - one where the workers stop working but do not leave their place of work.

In **Interphil Laboratories Employees Union-FFW vs. Interphil Laboratories, Inc.**, [G. R. No. 142824, Dec. 19, 2001], *overtime boycott* was considered a form of illegal strike. Discussing work slowdown, the Supreme Court, in the same case, declared that it is an inherently illegal activity essentially illegal even in the absence of a no-strike clause in a collective

bargaining contract, or statute or rule. It is a “strike on the installment plan;” a willful reduction in the rate of work by concerted action of workers for the purpose of restricting the output of the employer, in relation to a labor dispute; an activity by which workers, without a complete stoppage of work, retard production or their performance of duties and functions to compel management to grant their demands. Such a slowdown is generally condemned as inherently illicit and unjustifiable, because while the employees “continue to work and remain at their positions and accept the wages paid to them,” they, at the same time, “select what part of their allotted tasks they care to perform of their own volition or refuse openly or secretly, to the employer’s damage, to do other work.” In other words, they “work on their own terms.”

**146. What are the procedural but mandatory requisites of a lawful strike or lockout?**

There are seven (7) mandatory requisites, namely:

**First requisite: Valid and factual ground**

a. *Valid grounds:* There are **only** two (2), namely:

- (1) **CBA Deadlock;** and
- (2) **Unfair labor practice (ULP).**

b. No other grounds are allowed except the two mentioned above.

The following grounds, therefore, may not be properly cited as valid grounds for a strike or lockout in view of the pertinent provisions of the Labor Code, authoritative labor issuances and jurisprudence:

**1. Violation of collective bargaining agreements, except those which are gross in character.** Under Article 261, simple violation of the CBA is no longer treated as unfair labor practice but as mere grievance which should be processed through the grievance machinery in the CBA. It becomes an unfair labor practice only when it is gross in nature which means that there is flagrant and/or malicious refusal to comply with the economic provisions of such agreement by either the employer or the union.

**2. Inter-union or intra-union disputes.** The reason is these issues are resolved following the med-arbitration procedures prescribed by law and not through the staging of a strike/lockout.

Thus, a strike declared more on the ground of inter-union and intra-union conflict which is a non-strikeable issue is patently illegal pursuant to the provision of paragraph [b] of Article 263 of the Labor Code. (*Filcon Manufacturing Corporation vs. Lakas Manggagawa sa Filcon-Lakas Manggagawa Labor Center [LMF-LMLC]*, G. R. No. 150166, July 26, 2004).

**3. Issues already assumed by the DOLE Secretary or certified by him to the NLRC for compulsory arbitration.**

Once the Secretary of Labor and Employment assumes jurisdiction over a labor dispute affecting national interest or certifies the same to the NLRC for compulsory arbitration, the issues involved in said labor dispute can no longer be invoked by the union in staging a strike or by management in conducting a lockout.

**4. Issues already brought before grievance machinery or voluntary arbitration.**

In a plethora of case, it was held that a strike is illegal because of the failure to exhaust all the steps in the grievance machinery/voluntary arbitration provided for in the CBA. (*Union of Filipino Employees, vs. Nestle Philippines, Inc.*, G. R. No. 88710-13, Dec. 19, 1990).

For example, in **San Miguel Corporation vs. NLRC**, [G. R. No. 99266, March 2, 1999], where the union, instead of asking the CBA's Conciliation Board composed of five representatives each from the company and the union to decide the conflict, petitioner declared a bargaining deadlock, and thereafter, filed a notice of strike, the Supreme Court ruled that for failing to exhaust all the steps in the CBA, the notice of strike should have been dismissed by the NLRC and private respondent union ordered to proceed with the grievance and arbitration proceedings. In the case of **Liberal Labor Union vs. Phil. Can Co.**, [91 Phil. 72], the Supreme Court declared as illegal the strike staged by the union for not complying with the grievance procedure provided in the CBA, ruling that: "xxx the main purpose of the parties in adopting a procedure in the settlement of their disputes is to prevent a strike. This procedure must be followed in its entirety if it is to achieve its objective. xxx Strikes held in violation of the terms contained in the CBA are illegal, especially when they provide for conclusive arbitration clauses. These agreements must be strictly adhered to and respected if their ends have to be achieved. xxx." In abandoning the grievance proceedings and stubbornly refusing to avail of the remedies under the CBA, private respondent union violated the mandatory provisions of the CBA.

The above ruling was reiterated in the 2003 case involving the same employer - **San Miguel Corporation vs. NLRC**, [G. R. No. 119293, June 10, 2003]. As in the abovesited case, petitioner company evinced its willingness to negotiate with the union by seeking for an order from the NLRC to compel observance of the grievance and arbitration proceedings. Respondent union, however, resorted to force without exhausting all available means within its reach. Such infringement of the aforesaid CBA provisions constitutes further justification for the issuance of an injunction against the strike. As declared long ago: "Strikes held in violation of the terms contained in a CBA are illegal especially when they provide for conclusive arbitration clauses. These agreements must be strictly adhered to and respected if their ends have to be achieved." (*Citing Insurefco Paper Pulp & Project Workers' Union vs. Insular Sugar Refining Corp.*, 95 Phil. 761 (1954).

#### **5. Issues already brought before compulsory arbitration.**

In view of the provisions of the second paragraph of Article 264 [a] of the Labor Code, a strike or lockout is illegal if declared while a certain case is pending involving the same grounds for the strike or lockout. (*Bulletin Publishing Corporation vs. Sanchez*, 144 SCRA 428).

Thus, a strike conducted during the pendency of the compulsory arbitration proceedings on a labor dispute certified to the NLRC for compulsory arbitration is illegal. (*Filsyn Employees Chapter vs. Drilon*, G. R. No. 82225, April 5, 1989).

**6. Issues involving labor standards.** The law provides for certain procedures in case of labor standards violations.

#### **7. Issues involving legislated wage orders.**

Under Republic Act No. 6727 otherwise known as the *Wage Rationalization Act*, a strike is illegal if based on alleged salary distortion. The legislative intent that solution to the problem of wage distortions shall be sought by voluntary negotiation or arbitration, and not by strikes, lockouts or other concerted activities of the employees or management, is made clear in the rules implementing Republic Act No. 6727 issued by the Secretary of Labor and Employment pursuant to the authority granted by Section 13 of the said law.

### ***Second requisite: Notice of strike or notice of lockout***

#### ***a. When to file notice:***

- (1) In case of ULP: **15 days** from intended date of strike/lockout

(2) In case of **CBA Deadlock**: *30 days* from intended date thereof

b. *Parties who may file notice:*

- (1) **Certified union**, in case of *strike*; and
- (2) **Employer** in case of *lockout*.

c. *Where to file notice:* - **NCMB**

**Third requisite** - A notice must be served to the NCMB-DOLE at least twenty-four (24) hours prior to the taking of the strike/ lockout vote by secret balloting, informing said office of the decision to conduct a strike vote/lockout vote, and the date, place, and time thereof.

This is the newest requisite added by the Supreme Court per its 2005 ruling in **Capitol Medical Center, Inc. vs. NLRC**, [G. R. No. 147080, April 26, 2005]. This requisite is designed to:

- (a) inform the NCMB of the intent of the union to conduct a strike vote;
- (b) give the NCMB ample time to decide on whether or not there is a need to supervise the conduct of the strike vote to prevent any acts of violence and/or irregularities attendant thereto; and
- (c) should the NCMB decide on its own initiative or upon the request of an interested party including the employer, to supervise the strike vote, to give it ample time to prepare for the deployment of the requisite personnel, including peace officers if need be.

Unless and until the NCMB is notified at least 24 hours of the union's decision to conduct a strike vote, and the date, place, and time thereof, the NCMB cannot determine for itself whether to supervise a strike vote meeting or not and insure its peaceful and regular conduct. **The failure of a union to comply with the requirement of the giving of notice to the NCMB at least 24 hours prior to the holding of a strike vote meeting will render the subsequent strike staged by the union illegal.** (*Ibid.*).

**Fourth requisite: Strike vote or lockout vote**

- a. **Majority approval** of strike or lockout is required
- b. Strike vote *still necessary* even in case of union-busting.

**Fifth requisite: Strike vote report or lockout vote report**

- a. When to submit strike or lockout vote report - at least **7 days** prior to strike or lockout, as the case may be.
- b. Effect of non-submission of strike vote to NCMB, DOLE - strike or lockout is illegal
- c. Effect on 7-day waiting period if filed within cooling-off period: the 7-day waiting period shall be counted from the day following the expiration of the cooling-off period.
- d. Strike vote report in case of **union-busting** - still necessary, it being mandatory unlike the cooling-off period which may be dispensed with.

**Sixth requisite: Cooling-off period**

a. *General rule:*

- (1) In case of **CBA Deadlock** - *30 days*
- (2) In case of **ULP** - *15 days*

b. *Exception:* In the case of **union-busting** where the cooling-off period need not be complied with.

c. *When cooling-off period starts:* from the time the notice of strike/lockout is filed with NCMB, DOLE.

- d. *Purpose of the cooling-off period:* for the parties to settle the dispute.

**Seventh requisite: 7-day waiting period or strike ban**

- a. *Cooling-off period and waiting period, distinguished.*

**Waiting period** is counted from the time of submission of strike vote report to NCMB; **Cooling-off period** is counted from the filing of the Notice of Strike/Lockout with NCMB.

- b. *Purpose of the 7-day waiting period:* To ensure that the strike vote was indeed taken and that the majority of the members approved of it.
- c. Deficiency of even one day of the 7-day strike ban (or cooling off period) is fatal. Hence, the strike is illegal.

**147. Summary of principles governing strikes:**

1. A strike or lockout is illegal if any of the legal requisites (enumerated above) is not complied with. *Procedural requirements are mandatory.*
2. A strike or lockout is illegal if it is based on non-strikeable issues (e.g., inter-union or intra-union disputes or wage distortion).
3. A strike or lockout is illegal if the issues involved are already subject of compulsory or voluntary arbitration or conciliation or the steps in grievance machinery are not exhausted.
4. A strike or lockout is illegal if unlawful means were employed or prohibited acts or practices were committed (e.g., Use of force, violence, threats, coercion, etc.; Barricades, blockades and obstructions of ingress to [entrance] or egress from [exit] the company premises).
5. A strike or lockout is illegal if the notice of strike or notice of lockout is already converted into a preventive mediation case. *(See further discussion below).*
6. A strike or lockout is illegal if staged in violation of the “No-Strike, No-Lockout” clause in the collective bargaining agreement.
7. A strike or lockout is illegal if staged in violation of a temporary restraining order or an injunction or assumption or certification order.
8. A strike is illegal if staged by a minority union.
9. A strike or lockout is illegal if conducted for unlawful purpose/s (e.g.: Strike to compel dismissal of employee or to compel the employer to recognize the union or the so-called “Union-Recognition Strike”)
10. The local union and not the federation is liable to pay damages in case of illegal strike.

**148. What is the effect of conversion of the notice of strike/lockout into a preventive mediation case?**

Under the NCMB rules, there is a remedy called “*preventive mediation.*” The NCMB has the authority to convert a notice of strike filed by the union into a preventive mediation case if it finds that the real issues raised therein are non-strikeable in character. Such authority is in pursuance of the NCMB’s duty to exert all efforts at mediation and conciliation to enable the parties to settle the dispute amicably and in line with the state policy of favoring voluntary modes of settling labor disputes. Once a notice of strike/lockout is converted into a preventive mediation case, it will be dropped from the docket of notices of strikes/lockouts. Once dropped therefrom, a strike/lockout can no longer be legally staged based on the same notice. The conversion has the effect of dismissing the notice.

A case in point is **Philippine Airlines, Inc. vs. Secretary of Labor and Employment**, [G. R. No. 88201, January 23, 1991, 193 SCRA 223] where the strike was declared illegal for lack of a valid notice of strike, in view of the NCMB’s conversion of the notice therein into a preventive mediation case. The Supreme Court reasoned, thus:

“The NCMB had declared the notice of strike as ‘appropriate for preventive mediation.’ *The effect of that declaration* (which PALEA did not ask to be reconsidered

or set aside) *was to drop the case from the docket of notice of strikes*, as provided in Rule 41 of the NCMB Rules, *as if there was no notice of strike. During the pendency of preventive mediation proceedings no strike could be legally declared...* The strike which the union mounted, while preventive mediation proceedings were ongoing, was aptly described by the petitioner as ‘an ambush.’” (Emphasis supplied)

Clearly, therefore, applying the aforecited ruling, when the NCMB orders the preventive mediation in a strike case, the union thereupon loses the notice of strike it had filed. Consequently, if it still defiantly proceeded with the strike while mediation was ongoing, the strike is illegal.

In the case of **NUWHRAIN vs. NLRC**, [287 SCRA 192 (1998)] where the petitioner-union therein similarly defied a prohibition by the NCMB, the Supreme Court said:

“Petitioners should have complied with the prohibition to strike ordered by the NCMB when the latter dismissed the notices of strike after finding that the alleged acts of discrimination of the hotel were not ULP, hence not ‘strikeable.’ The refusal of the petitioners to heed said proscription of the NCMB is reflective of bad faith.”

Such disregard of the mediation proceedings is deemed a blatant violation of the Implementing Rules, which explicitly oblige the parties to bargain collectively *in good faith* and prohibit them from impeding or disrupting the proceedings.

In the 2003 case of **San Miguel Corporation vs. NLRC**, [G. R. No. 119293, June 10, 2003], the notice of strike filed by the union was also converted into a preventive mediation case. After such conversion, a strike can no longer be staged based on said notice for the reason that upon such conversion, there is no more notice of strike to speak of. When the NCMB ordered the preventive mediation, the union had thereupon lost the notice of strike it had filed.

#### **149. What is the “NO-STRIKE, NO-LOCKOUT” clause in the CBA?**

The right to strike is not absolute. It has heretofore been held that a “*no-strike, no lockout*” provision in the CBA is a valid stipulation although the clause may be invoked by an employer only when the strike is *economic* in nature or one which is conducted to force wage or other concessions from the employer that are not mandated to be granted by the law itself. (*Samahan ng mga Manggagawa sa M. Greenfield (MSMG-UWP) vs. Ramos*, G. R. No. 113907, Feb. 28, 2000)

Jurisprudence abounds in its enunciation that such no-strike provision in the CBA only bars strikes which are economic in nature, but **not** strikes grounded on unfair labor practices. (*MSMG-UWP vs. Ramos*, 326 SCRA 428 (2000), citing *Master Iron Labor Union vs. NLRC* 219 SCRA 47 [1993]).

In a situation where ULP is alleged, it is not essential that the unfair labor practice act has, in fact, been committed; it suffices that the striking workers are shown to have acted honestly on an impression that the company has committed such unfair labor practice and the surrounding circumstances could warrant such a belief in good faith. (*Panay Electric Company, Inc. vs. NLRC*, G. R. No. 102672, Oct. 4, 1995; *People’s Industrial and Commercial Employees and Workers Organization [FFW] vs. People’s Industrial and Commercial Corporation*, 112 SCRA 430).

The Supreme Court consistently ruled in a long line of cases that a strike is illegal if staged in violation of the “*No Strike/No Lockout Clause*” in the CBA stating that a strike, which is in violation of the terms of the CBA, is illegal, especially when such terms provide for conclusive arbitration clause. (*Filcon Manufacturing Corporation vs. Lakas Manggagawa sa Filcon-Lakas Manggagawa Labor Center [LMF-LMLC]*, G. R. No. 150166, July 26, 2004).

Thus, in **Interphil Laboratories Employees Union-FFW vs. Interphil Laboratories, Inc.**, [G. R. No. 142824, December 19, 2001], the Supreme Court considered the conduct of “overtime boycott” and “work slowdown” by the employees as constitutive of illegal strike and a

violation of the CBA which prohibits the union or employee, during the existence of the CBA, to stage a strike or engage in slowdown or interruption of work.

**150. What is the effect of a strike staged in violation of an assumption or certification order?**

A strike that is undertaken after the issuance by the Secretary of Labor and Employment of an assumption or certification order becomes a prohibited activity and thus illegal, pursuant to the second paragraph of Article 264 of the Labor Code. The union officers and members, as a result, are deemed to have lost their employment status for having knowingly participated in an illegal strike. Stated differently, from the moment a worker defies a return-to-work order, he is deemed to have abandoned his job. The loss of employment results from the striking employees' own act - an act which is illegal, an act in violation of the law and in defiance of authority. (*Philippine Airlines, Inc. vs. Brillantes, G. R. No. 119360, Oct. 10, 1997*).

Case law, likewise, provides that by staging a strike after the assumption or certification for arbitration, the workers forfeit their right to be readmitted to work, having abandoned their employment. (*National Federation of Labor vs. NLRC, 283 SCRA 275, 287, Dec. 15, 1997; Marcopper Mining Corporation vs. Brillantes, 254 SCRA 595*).

**151. What is the effect of a strike conducted in violation of a temporary restraining order or injunction?**

A strike is illegal if it violates a temporary restraining order (TRO) or injunction issued for the purpose of enjoining the union and/or its members from obstructing the company premises, and ordering the removal therefrom of all the barricades. (*Association of Independent Unions in the Philippines vs. NLRC, G. R. No. 120505, March 25, 1999, 305 SCRA 219*).

**152. Can a minority union lawfully stage a strike?**

In **United Restauror's Employees & Labor Union-PAFLU vs. Torres**, [26 SCRA 435, December 18, 1968], it was held that a strike conducted by a minority union is patently illegal. No labor dispute which will justify the conduct of a strike may exist between the employer and a minority union. To permit the union's picketing activities would be to flaunt at the will of the majority.

**153. Can a strike be staged by a union whose legitimacy is in question?**

In the 2004 case of **Stamford Marketing Corp., vs. Julian**, [G. R. No. 145496, February 24, 2004], the Supreme Court had occasion to rule that a strike conducted by a union which has not been shown to be a legitimate labor organization, is illegal. Under Article 263 [c], only a legitimate labor organization is entitled to file a notice of strike on behalf of its members. While the right to strike is specifically granted by law, it is a remedy which can only be availed of by a legitimate labor organization. Absent a showing as to the legitimate status of the labor organization, said strike would have to be considered as illegal.

**154. What are the examples of a strike conducted for unlawful purposes?**

**a. Strike for unlawful purpose is illegal.**

Strike, not being an absolute right, comes into being and is safeguarded by law only if the acts intended to render material aid or protection to a labor union arise from a lawful ground, reason or motive. But if the motive which had impelled, prompted, moved or led members of a labor union to stage a strike, even if they had acted in good faith in staging it, be unlawful, illegitimate, unjust, unreasonable or trivial, the strike may be declared illegal. (*Filcon Manufacturing Corporation vs. Lakas Manggagawa sa Filcon-Lakas Manggagawa Labor Center [LMF-LMLC], G. R. No. 150166, July 26, 2004; Interwood Employees Association vs. Interwood Hardwood and Veneer Company of the Philippines, 52 O.G. 3936*).

**b. Strike to compel dismissal of employee.**

For instance, a strike staged for the purpose of unreasonably demanding the dismissal of a factory foreman is illegal. (*Luzon Marine Department Union vs. Roldan*, G. R. No. L-2660, May 30, 1950, 86 Phil. 507).

***c. Union-recognition-strike, illegal.***

A strike staged by a union to compel the employer to extend recognition to it as the bargaining representative is illegal. A union-recognition-strike, as its legal designation implies, is calculated to compel the employer to recognize one's union, and not the other contending group, as the employees' bargaining representative to work out a CBA despite the striking union's doubtful majority status to merit voluntary recognition and lack of formal certification as the exclusive representative in the bargaining unit. (*Association of Independent Unions in the Philippines vs. NLRC*, G. R. No. 120505, March 25, 1999, 305 SCRA 219).

If the majority status of a union is in doubt, a strike cannot be declared by reason of non-recognition by management of said union for purposes of collective bargaining. It is only when the union's majority status is established through appropriate certification election, that the employer's refusal to the demand for collective bargaining negotiations becomes illegal. Hence, the union may lawfully stage a strike based on such refusal which, under Article 248 [g] constitutes an unfair labor practice act.

But if the strike is triggered not only by the desire for recognition by the union but also because of the unfair labor practices committed by the employer, the same may not be considered illegal. In ***Caltex Filipino Managers and Supervisors Association vs. CIR***, [44 SCRA 351], the strike of the Association was declared not just for the purpose of gaining recognition but also for bargaining in bad faith on the part of the company and by reason of the unfair labor practices committed by its officials. Even if the strike were really declared for the purpose of recognition, the concerted activities of the officers and members of the Association in this regard may not be said to be unlawful nor the purpose thereof as trivial. Significantly, in the voluntary return-to-work agreement entered into between the company and the Association thereby ending the strike, the company agreed to recognize for membership in the Association the position titles mentioned in Annex "B" of said agreement. This goes to show that striking for recognition is productive of good result insofar as a union is concerned.

***d. Trivial and puerile purpose.***

If a strike is declared for a trivial, unjust or unreasonable purpose or if carried out through unlawful means, the law will not sanction it and the court will declare it illegal. (*Luzon Marine Department Union vs. Roldan*, G. R. No. L-2660, May 30, 1950, 86 Phil. 507).

***e. Premature strike.***

A strike is illegal if staged without giving the employer reasonable time to consider and act on the demands made by the union. (*Almeda vs. CIR*, 96 Phil. 306; *Insurefco Paper vs. Insurefco*, 95 Phil. 761).

***f. Strike to circumvent contracts and judicial orders.***

A strike is illegal if used as a means to circumvent valid contractual commitments (*Manila Oriental Sawmills vs. NLU*, 91 Phil. 28) or to circumvent judicial orders lawfully issued. (*ALPAP vs. CIR*, 76 SCRA 274).

**155. What is a good faith strike?**

It is a well-established policy enunciated in several labor cases that a strike does not automatically carry the stigma of illegality even if no unfair labor practice were committed by the employer. It suffices if such belief in good faith is entertained by labor as the inducing factor for staging a strike. (*PNOC Dockyard and Engineering Corporation vs. NLRC*, G. R. No. 118223, June 26, 1998, 291 SCRA 231; *Pepsi-Cola Labor Union vs. NLRC*, 114 SCRA 930, 939, June 29, 1982).

Indeed, the presumption of legality prevails even if the allegation of unfair labor practice is subsequently found to be untrue provided that the union and its members believed in good faith in the truth of such averment. (*Samahan ng mga Manggagawa sa M. Greenfield (MSMG-UWP) vs. Ramos, G. R. No. 113907, Feb. 28, 2000; Master Iron Labor Union vs. NLRC, 219 SCRA 47, 60, Feb. 17, 1993*).

For instance, a strike based on a “non-strikeable” ground is generally an illegal strike; corollarily, a strike grounded on ULP is illegal if no such acts actually exist. As an exception, however, even if no ULP acts are committed by the employer, if the employees believe in good faith that ULP acts exist so as to constitute a valid ground to strike, then the strike held pursuant to such belief may be legal. As a general proposition, therefore, where the union believed that the employer committed ULP and the circumstances warranted such belief in good faith, the resulting strike may be considered legal although, subsequently, such allegations of unfair labor practices were found to be groundless. (*National Union of Workers in Hotels, Restaurants and Allied Industries vs. NLRC, G. R. No. 125561, March 6, 1998, 287 SCRA 192; Panay Electric Co., Inc. vs. NLRC, G. R. No. 102672, Oct. 4, 1995, 248 SCRA 688*).

However, good faith cannot be invoked as a defense if the ocular inspection by the labor authorities of the employer’s facilities yields no semblance of such good faith. (*PASVIL/Pascual Liner, Inc. Workers Union - NAFLU vs. NLRC, G. R. No. 124823, July 28, 1999*).

It is, therefore, an established caveat that a mere claim of good faith would not justify the holding of a strike if the circumstances would not warrant such belief. It is not enough that the union believed that the employer committed acts of ULP when the circumstances clearly negate even a *prima facie* showing to sustain such belief. (*National Union of Workers in Hotels, Restaurants and Allied Industries vs. NLRC, supra; Tiu vs. NLRC, G. R. No. 123276, Aug. 18, 1997*).

In **Samahang Manggagawa sa Sulpicio Lines, Inc. – NAFLU vs. Sulpicio Lines, Inc.**, [G. R. No. 140992, March 25, 2004], the petitioner union claimed that the strike was legal for it was done in good faith, having been staged in response to what its officers and members honestly perceived as unfair labor practice or union-busting committed by respondent company. The Court, however, was unconvinced because it found the accusation of union-busting bereft of any proof. Scanning the records very carefully failed to indicate any evidence to sustain such charge. Hence, the strike was declared illegal in the light of the ruling in *Tiu vs. NLRC*, [G.R. No. 123276, August 18, 1997, 277 SCRA 680, 687] that it is the union which had the burden of proof to present substantial evidence to support its allegations (of unfair labor practices committed by management). The facts and the evidence did not establish even at least a rational basis why the union would wield a strike based on alleged unfair labor practices it did not even bother to substantiate during the conciliation proceedings. It is not enough that the union believed that the employer committed acts of unfair labor practice when the circumstances clearly negate even a *prima facie* showing to warrant such a belief.

#### **156. May strikers be dismissed in cases of “good faith” strikes?**

In case the strike is declared by the union upon the belief in “good faith” that the employer has committed unfair labor practices, the strikers cannot be said to have lost their status as employees of the company although they did not wait for the cooling-off period to lapse before staging the strike. (*Ferrer vs. CIR, 17 SCRA 353; Cebu Portland Cement Company vs. Cement Workers Union, 25 SCRA 504*).

However, as held in *Reliance Surety and Insurance Co., Inc. vs. NLRC*, [G. R. No. 86917-18, Jan. 25, 1991], if the strike conducted was violative of the mandatory legal requirements, was attended by acts of harassment and violence, was prompted by no actual, existing unfair labor practice committed by the employer, and there was no semblance of good faith, the strike is illegal. The ruling in *Bacus vs. Ople*, [G. R. No. L-56856, October 23, 1984] where the Supreme Court held that the finding of illegality attending a strike does not justify the wholesale dismissal of strikers who were otherwise impressed with good faith, cannot be applied here.

Thus, as pronounced in **National Federation of Labor vs. NLRC**, [283 SCRA 275, 287-288, Dec. 15, 1997], even if the union acted in good faith in the belief that the company was

committing an unfair labor practice, if no notice of strike and a strike vote were conducted, the said strike is illegal. (*See also First City Interlink Transportation Co. vs. Confesor*, G. R. No. 106316, May 5, 1997).

**157. What is “improved offer balloting”?**

**Improved offer balloting.** - In case of a **strike**, the Regional Branch of the NCMB shall, at its own initiative or upon the request of any affected party, conduct a referendum by secret balloting on the improved offer of the employer on or before the 30th day of the strike. When at least a majority of the union members vote to accept the improved offer, the striking workers shall immediately return to work and the employer shall thereupon readmit them upon the signing of the agreement.

**158. What is “reduced offer balloting”?**

**Reduced offer balloting.** - In case of a **lockout**, the Regional Branch of the NCMB shall conduct a referendum by secret balloting on the reduced offer of the union on or before the 30th day of the lockout. When at least a majority of the board of directors or trustees or the partners holding the controlling interest in the case of partnership, vote to accept the reduced offer, the workers shall immediately return to work and the employer shall thereupon readmit them upon the signing of the agreement.

**159. What is the power of the DOLE Secretary to assume jurisdiction over a labor dispute or certify it to the NLRC for compulsory arbitration?**

The DOLE Secretary may assume jurisdiction over a labor dispute, or certify it to the NLRC for compulsory arbitration, if, in his opinion, it may cause or likely to cause a strike or lockout in an industry indispensable to the national interest. (**NOTE: The President may also exercise the power to assume jurisdiction over a labor dispute.**)

**160. What is the effect of such assumption or certification of labor dispute to the NLRC?**

- a. **On intended or impending strike or lockout** - automatically enjoined even if a Motion for Reconsideration is filed.
- b. **On actual strike or lockout** - strikers or locked out employees should immediately return to work and employer should readmit them back.
- c. **On cases filed or may be filed** - All shall be subsumed/absorbed by the assumed or certified case **except** when the order specified otherwise. The parties to the case should inform the DOLE Secretary of pendency thereof.

In the 2005 case of **University of Immaculate Concepcion, Inc. vs. The Honorable Secretary of Labor**, [G. R. No. 151379, January 14, 2005], the University contends that the Secretary cannot take cognizance of an issue involving employees who are not part of the bargaining unit. It insists that since the individual respondents had already been excluded from the bargaining unit by a final and executory order by the panel of Voluntary Arbitrators, then they cannot be covered by the Secretary’s assumption order. Said the Supreme Court:

“This Court finds no merit in the UNIVERSITY’s contention. In *Metrolab Industries, Inc. v. Roldan-Confesor*, (254 SCRA 182, 188-189 [1996]), this Court declared that it recognizes the exercise of management prerogatives and it often declines to interfere with the legitimate business decisions of the employer. This is in keeping with the general principle embodied in Article XIII, Section 3 of the Constitution, (Article XIII, Section 3 of the Constitution) which is further echoed in Article 211 of the Labor Code. However, as expressed in *PAL v. National Labor Relations Commission*, (225 SCRA 301, 308 [1993]), this privilege is not absolute, but subject to exceptions. One of these exceptions is when the Secretary of Labor assumes jurisdiction over labor disputes involving industries indispensable to the national interest under Article 263(g) of the Labor Code. xxx.

“When the Secretary of Labor ordered the UNIVERSITY to suspend the effect of the termination of the individual respondents, the Secretary did not

exceed her jurisdiction, nor did the Secretary gravely abuse the same. It must be pointed out that one of the substantive evils which Article 263(g) of the Labor Code seeks to curb is the exacerbation of a labor dispute to the further detriment of the national interest. In her Order dated March 28, 1995, the Secretary of Labor rightly held:

“It is well to remind both parties herein that the main reason or rationale for the exercise of the Secretary of Labor and Employment’s power under Article 263(g) of the Labor Code, as amended, is the maintenance and upholding of the status quo while the dispute is being adjudicated. Hence, the directive to the parties to refrain from performing acts that will exacerbate the situation is intended to ensure that the dispute does not get out of hand, thereby negating the direct intervention of this office.

“The University’s act of suspending and terminating union members and the Union’s act of filing another Notice of Strike after this Office has assumed jurisdiction are certainly in conflict with the status quo ante. By any standards[,] these acts will not in any way help in the early resolution of the labor dispute. It is clear that the actions of both parties merely served to complicate and aggravate the already strained labor-management relations.

“Indeed, it is clear that the act of the UNIVERSITY of dismissing the individual respondents from their employment became the impetus for the UNION to declare a second notice of strike. It is not a question anymore of whether or not the terminated employees, the individual respondents herein, are part of the bargaining unit. Any act committed during the pendency of the dispute that tends to give rise to further contentious issues or increase the tensions between the parties should be considered an act of exacerbation and should not be allowed.”

#### **161. May picketing be enjoined? Are there exceptions?**

As a general rule, injunction cannot be issued against the conduct of picketing by the workers. Under our constitutional set up, picketing is considered part of the freedom of speech duly guaranteed by the constitution. (*Mortera vs. CIR*, 79 Phil. 345).

However, excepted from this legal proscription are the following situations:

1. where picketing is carried out through the use of illegal means (*Mortera vs. CIR*, 79 Phil. 345); or
2. where picketing involves the use of violence and other illegal acts (*PAFLU vs. Barot*, 99 Phil. 1008; *Caltex vs. CIR*, 44 SCRA 350); or
3. where injunction becomes necessary to protect the rights of third parties (*PAFLU vs. Cloribel*, 27 SCRA 465).

#### **161. May an injunction be issued in strike or lockout cases?**

As a *general rule*, strikes and lockouts validly declared, enjoy the protection of law and cannot be enjoined unless illegal acts are committed or threatened to be committed in the course of such strikes or lockouts. Ordinarily, the law vests in the NLRC the authority to issue injunctions to restrain the commission of illegal acts during the strikes and pickets.

This policy applies even if the strike appears to be illegal in nature. The rationale for this policy is the protection extended to the right to strike under the constitution and the law. It is basically treated as a weapon that the law guarantees to employees for the advancement of their interest and for their protection. (*Caltex vs. Lucero*, 4 SCRA 1196).

However, in some cases, injunctions issued to enjoin the conduct of the strike were held to be valid.

In the 2003 case of **San Miguel Corporation vs. NLRC**, [G. R. No. 119293, June 10, 2003], the Supreme Court ruled that injunction may be issued not only against the commission of

illegal act in the course of the strike but the strike itself. In this case, the notice of strike filed by the union has been converted into a preventive mediation case. Having been so converted, a strike can no longer be staged based on said notice. Upon such conversion, the legal effect is that there is no more notice of strike to speak of. When the NCMB ordered the preventive mediation the union had thereupon lost the notice of strike it had filed. However, the NCMB which effected the conversion, has, under the law, no coercive powers of injunction. Consequently, petitioner company sought recourse from the NLRC. The NLRC, however, issued a TRO only for free ingress to and egress from petitioner's plants, but did not enjoin the unlawful strike itself. It ignored the fatal lack of notice of strike consequent the conversion thereof into a preventive mediation case. Article 264(a) of the Labor Code explicitly states that a declaration of strike without first having filed the required notice is a prohibited activity, which may be prevented through an injunction in accordance with Article 254. Clearly, public respondent should have granted the injunctive relief to prevent the grave damage brought about by the unlawful strike. (*See also PAL vs. Drilon, 193 SCRA 223 [1991]*).

In the earlier case of **San Miguel Corporation vs. NLRC**, [304 SCRA 1(1999)] where the same issue of NLRC's duty to enjoin an unlawful strike was raised, the Supreme Court ruled that the NLRC committed grave abuse of discretion when it denied the petition for injunction to restrain the union from declaring a strike based on non-strikeable grounds.

In **IBM vs. NLRC**, [198 SCRA 586 (1991)], it was held that it is the "legal duty and obligation" of the NLRC to enjoin a partial strike staged in violation of the law. Failure promptly to issue an injunction by the NLRC was likewise held therein to be an abuse of discretion.

In **Bulletin Publishing vs. Sanchez**, [G. R. No. 74425, Oct. 7, 1986], injunction was allowed against a strike which was staged to compel the employer to ignore the law. The reason is when trade unionism and strikes are used in violation of the law, misuse thereof can be the subject of judicial intervention.

#### **162. What is meant by "return-to-work" order?**

A return-to-work order is an indispensable consequence of the assumption or certification order issued by the DOLE Secretary in national interest cases. It is **automatic** in nature which means that it may be enforced even if it is not expressly stated in the assumption or certification order because it is considered the logical and legal effect of the issuance of said order. Violation thereof, *even for one day*, would make the strike illegal. This holds true even if a Motion for Reconsideration of the assumption or certification order is filed. (*Telefunken Semiconductors Employees Union-FFW vs. CA, G. R. Nos. 143013-14, Dec. 18, 2000*).

Thus, it is error for striking workers to continue with their strike alleging absence of a return-to-work order. Article 263 [g] is clear. Once an assumption/certification order is issued, strikes are enjoined or, if one has already taken place, all strikers should immediately return to work. (*Ibid.; id.*).

Returning to work, therefore, on the part of a worker, is "not a matter of option or voluntariness but of obligation." (*Marcopper Mining Corporation vs. Brillantes, G. R. No. 119381, March 11, 1996, 254 SCRA 595, 602; Cf. St. Scholastica's College vs. Torres, 210 SCRA 565 [1992]; Federation of Free Workers vs. Inciong, 208 SCRA 157 [1992]*).

#### **163. What is meant by the phrase "all striking or locked-out employees" and "readmit all workers" within the context of a return-to-work order?**

Under Article 263 [g], once an assumption or certification order is issued, the consequence thereof is clear, thus:

"Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, **all striking or locked-out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout.**" (Emphasis supplied)

In the 2005 case of **PLDT vs. Manggagawa ng Komunikasyon sa Pilipinas**, [G. R. No. 162783, July 14, 2005], Secretary of Labor and Employment Patricia Sto. Tomas certified the labor dispute to the NLRC for compulsory arbitration. In her order, she directed the return to work of all strikers “*except those who were terminated due to redundancy.*” In setting aside this “*qualified*” return-to-work order for being contrary to law, the Court of Appeals observed that:

“The phrase ‘all striking or locked-out employees’ and ‘readmit all workers’ does not distinguish or qualify and emphatically is a catch-all embracing enumeration of who should be returned to work. ‘Where the law does not distinguish, courts should not distinguish (*Recaña v. Court of Appeals*, 349 SCRA 24 [2001]).”

The Supreme Court affirmed said ruling of the CA. As Article 263 [g] is clear and unequivocal in stating that ALL striking or locked-out employees shall immediately return to work and the employer shall immediately resume operations and readmit ALL workers under the same terms and conditions prevailing before the strike or lockout, then the unmistakable mandate must be followed by the Secretary. In the 2004 case of **Trans-Asia Shipping Lines, Inc.-Unlicensed Crews Employees Union-Associated Labor Unions (Tasli-Alu) vs. Court of Appeals**, [G.R. No. 145428, July 07, 2004], it was held:

“. . . Assumption of jurisdiction over a labor dispute, or as in this case the certification of the same to the NLRC for compulsory arbitration, always co-exists with an order for workers to return to work immediately and *for employers to readmit all workers under the same terms and conditions prevailing before the strike or lockout.*”

**164. What is meant by “status quo ante” within the context of a return-to-work order?**

In the same 2005 **PLDT** case [supra], the Supreme Court had occasion to describe what *status quo* prior to the strike means. Records show that the strike occurred on December 23, 2002. Article 263 [g] directs that the employer must readmit all workers under the same terms and conditions prevailing before the strike. Since the strike was held on the aforementioned date, then the condition prevailing before it, which was the condition present on December 22, 2002, must be maintained. Undoubtedly, on December 22, 2002, the 383 members of the private respondent-union who were dismissed on December 31, 2002 due to alleged redundancy were still employed by the petitioner and holding their respective positions. This is the *status quo* that must be maintained.

**165. What is meant by the phrase “under the same terms and conditions prevailing before the strike” within the context of a return-to-work order?**

Article 263 [g] constitutes a limitation or exception to the management prerogative of hiring, firing, transfer, demotion and promotion of employees. And to the extent that Article 263 [g] calls for the admission of all workers under the same terms and conditions prevailing before the strike, the employer is restricted from exercising its generally unbounded right to transfer or reassign its employees. (*Trans-Asia Shipping Lines, Inc. – Unlicensed Crews Employees Union – Associated Labor Unions [TASLI-ALU] vs. CA, G. R. No. 145428, July 7, 2004*).

The case of **Metrolab Industries, Inc. vs. Roldan-Confesor**, [254 SCRA 182 (1996)], is particularly instructive. In this case, the Secretary of Labor, pursuant to Article 263 [g], assumed jurisdiction over the labor dispute at Metro Drug, Inc. Pending resolution of said dispute, the company laid-off ninety-four (94) of its rank-and-file employees invoking the exercise of management prerogative. The Secretary of Labor declared the layoff illegal and ordered the company to reinstate the employees. The Court upheld said order of the Secretary of Labor as it quoted the assailed resolution therein, *viz.*:

“... But it may nevertheless be appropriate to mention here that one of the substantive evils which Article 263 (g) of the Labor Code seeks to curb is the exacerbation of a labor dispute to the further detriment of the national interest. When a labor dispute has in fact occurred and a general injunction has been

issued restraining the commission of disruptive acts, management prerogatives must always be exercised consistently with the statutory objective. “

Likewise *apropos* is the case of **University of Sto. Tomas vs. NLRC**, [190 SCRA 758 (1990)], where the Secretary of Labor, pursuant to Article 263 [g], directed the university to “readmit all its faculty members, including the sixteen (16) union officials, under the same terms and conditions prevailing prior to the present dispute.” Instead of fully complying therewith by allowing the faculty members to teach in the classroom, the university gave some of them “substantially equivalent academic assignments without loss in rank, pay or privilege.” The Court ruled therein that the grant of substantially equivalent academic assignments could not be sustained because it could not be considered a reinstatement under the same terms and conditions prevailing before the strike.

In **Trans-Asia Shipping Lines, Inc. – Unlicensed Crews Employees Union – Associated Labor Unions [TASLI-ALU] vs. Court of Appeals**, [G. R. No. 145428, July 7, 2004], it was ruled that the respondent company cannot rightfully exercise its management’s prerogative to determine where its employees are to be assigned or to determine their job assignments in view of the explicit directive contained in the return-to-work orders of the Secretary of Labor to accept the striking workers back “under the same terms and conditions prevailing prior to the strike.” The order simply means that the employees should be returned to their ship assignments as before they staged their strike. The respondent is mandated, under the said order, to issue embarkation orders to the employees to enable them to report to their ship assignments in compliance with the Order of the Secretary of Labor.

**166. Is “payroll reinstatement” proper to implement a return-to-work order?**

The Supreme Court, instead of actual reinstatement, allowed payroll reinstatement in **University of Immaculate Conception, Inc. vs. The Honorable Secretary of Labor**, [G. R. No. 151379, January 14, 2005]. It said:

“With respect to the Secretary’s Order allowing payroll reinstatement instead of actual reinstatement for the individual respondents herein, an amendment to the previous Orders issued by her office, the same is usually not allowed. Article 263(g) of the Labor Code aforementioned states that all workers must immediately return to work and all employers must readmit all of them under the same terms and conditions prevailing before the strike or lockout. The phrase “under the same terms and conditions” makes it clear that the norm is actual reinstatement. This is consistent with the idea that any work stoppage or slowdown in that particular industry can be detrimental to the national interest.

“In ordering payroll reinstatement in lieu of actual reinstatement, then Acting Secretary of Labor Jose S. Brillantes said:

‘Anent the Union’s Motion, we find that superseding circumstances would not warrant the physical reinstatement of the twelve (12) terminated employees. Hence, they are hereby ordered placed under payroll reinstatement until the validity of their termination is finally resolved.’

“As an exception to the rule, payroll reinstatement must rest on special circumstances that render actual reinstatement impracticable or otherwise not conducive to attaining the purposes of the law. (*Manila Diamond Hotel Employees Union vs. CA*, G.R. No. 140518 [Dec. 16, 2004]; *UST vs. NLRC*, 190 SCRA 758 [1990]).

“The ‘superseding circumstances’ mentioned by the Acting Secretary of Labor no doubt refer to the final decision of the panel of arbitrators as to the confidential nature of the positions of the twelve private respondents, thereby rendering their actual and physical reinstatement impracticable and more likely to exacerbate the situation. The payroll reinstatement in lieu of actual reinstatement ordered in these cases, therefore, appears justified as an exception to the rule until the validity of their termination is finally resolved. This Court sees no grave abuse of discretion on the part of the Acting Secretary of Labor in ordering the same. Furthermore, the issue has

not been raised by any party in this case.” (*University of Immaculate Concepcion, Inc. vs. The Hon. Secretary of Labor*, G. R. No. 151379, Jan. 14, 2005).

The same holding was made in the earlier case of **University of Santo Tomas** [supra]. Here, the Secretary assumed jurisdiction over the labor dispute between striking teachers and the university. He ordered the striking teachers to return to work and the university to accept them under the same terms and conditions. However, in a subsequent order, the NLRC provided payroll reinstatement for the striking teachers as an alternative remedy to actual reinstatement. The Supreme Court affirmed the validity of such an order and ruled that NLRC did not commit grave abuse of discretion in providing for the alternative remedy of payroll reinstatement. Moreover, the Supreme Court found that it was merely an error of judgment, which is not correctible by a special civil action for *certiorari*. It observed that the NLRC was only trying its best to work out a satisfactory *ad hoc* solution to a festering and serious problem.

**167. When is “payroll reinstatement” not proper?**

In some cases, however, payroll reinstatement was not allowed by the Supreme Court. For instance, in **Manila Diamond Hotel Employees’ Union vs. The Hon. Court of Appeals**, [G. R. No. 140518, December 16, 2004], the High Court disallowed the payroll reinstatement of workers who were ordered to return to work by reason of the assumption order. It distinguished the case from the earlier case of **University of Santo Tomas (UST) vs. NLRC**, [190 SCRA 758 (1990)] (supra) in the light of one very important fact: the teachers in the latter case could not be given back their academic assignments since the order of the Secretary for them to return to work was given in the middle of the first semester of the academic year. The NLRC was, therefore, faced with a situation where the striking teachers were entitled to a return-to-work order, but the university could not immediately reinstate them since it would be impracticable and detrimental to the students to change teachers at that point in time.

In the **Manila Diamond Hotel** case, there was no showing that the facts called for payroll reinstatement as an alternative remedy. The High Tribunal declared that a strained relationship between the striking employees and management is no reason for payroll reinstatement in lieu of actual reinstatement. The petitioner-union correctly pointed out that labor disputes naturally involve strained relations between labor and management, and that in most strikes, the relations between the strikers and the non-strikers will similarly be tense. Bitter labor disputes always leave an aftermath of strong emotions and unpleasant situations. Nevertheless, the government must still perform its function and apply the law, especially if national interest is involved.

As a consequence of the above findings, the Supreme Court in **Manila Diamond Hotel** declared the Secretary’s subsequent order for mere payroll reinstatement as constitutive of grave abuse of discretion amounting to lack or excess of jurisdiction. Indeed, the “great breadth of discretion” by the Secretary once he assumes jurisdiction over a labor dispute is recognized. However, payroll reinstatement in lieu of actual reinstatement is a departure from the rule in these cases and there must be showing of special circumstances rendering actual reinstatement impracticable, as in the *UST* case aforementioned, or otherwise not conducive to attaining the purpose of the law in providing for assumption of jurisdiction by the Secretary of Labor and Employment in a labor dispute that affects the national interest. None appears to have been established in this case.

**168. Are the demands of the union deemed waived upon a voluntary return to work?**

The act of strikers in voluntarily returning to work does not result in the waiver of their original demands. Such act of returning to work only meant that they desisted from the strike which desistance is a personal act of the strikers and cannot be used against the union and interpreted as a waiver by it of its original demands for which the strike was adopted as a weapon. (*Bisaya Land Transportation Co., Inc. vs. CIR*, 102 Phil. 438).

In the same breadth, a return-to-work order does not have the effect of rendering as moot and academic, the issue of the legality of the strike. (*Insurefco Pulp vs. Insurefco*, 95 Phil. 761).

However, according to **Unlicensed Crews Employees Union – Associated Labor Unions [TASLI-ALU] vs. CA**, [G. R. No. 145428, July 7, 2004], an employer may be

considered to have waived its right to proceed against the striking employees for alleged commission of illegal acts during the strike when, during a conference before the Chairman of the NLRC, it agreed to reinstate them and comply fully with the return-to-work order issued by the Secretary of Labor and Employment. (*Reformist Union of R.B. Liner, Inc. vs. NLRC*, 266 SCRA 713 [1997])

**169. Does the filing of a Motion for Reconsideration affect the return-to-work order?**

The filing of a motion for reconsideration does not affect the immediate executory character of the return-to-work order issued as a consequence of an assumption or certification order. The reason is simple: a return-to-work order is immediately effective and executory notwithstanding the filing of a motion for reconsideration. (*Telefunken Semiconductors Employees Union-FFW vs. Secretary of Labor and Employment*, G. R. Nos. 122743 and 127215, Dec. 12, 1997, 283 SCRA 145).

To say that the effectivity of the return-to-work order must wait affirmance in a motion for reconsideration is not only to emasculate it but indeed to defeat its import, for by then, the deadline fixed for the return-to-work would, in the ordinary course, have already passed and, hence, can no longer be affirmed insofar as the time element is concerned. (*Philippine Airlines Employees Association vs. Philippine Airlines, Inc.*, 38 SCRA 372; *University of Santo Tomas vs. NLRC*, G. R. No. 89920, Oct. 18, 1990).

**170. What is the effect of defiance of assumption or certification order or return-to-work order?**

Non-compliance with the assumption/certification order of the Secretary of Labor and Employment or a return-to-work order issued pursuant thereto by either the Secretary or the NLRC to which a labor dispute is certified, is considered an illegal act committed in the course of the strike or lockout. (See Section 4, Rule IX, Rules of Procedure of the NLRC, as amended by NLRC Resolution No. 01-02, Series of 2002; *Telefunken Semiconductors Employees Union-FFW vs. CA*, G. R. Nos. 143013-14, Dec. 18, 2000).

**a. Effect on strikers in case of strike.**

The Supreme Court held in the 2004 case of **San Juan de Dios Educational Foundation Employees Union – AFW vs. San Juan de Dios Educational Foundation, Inc. [Hospital]**, (G. R. No. 143341, May 28, 2004), that in case of non-compliance by the strikers with return-to-work order issued in connection with the assumption/certification by the Secretary of Labor and Employment, they may be subjected to immediate disciplinary action, including dismissal or loss of employment status and even to criminal prosecution.

Under Article 264, paragraph [a], it is clear that from the moment a worker defies a return-to-work order, he is deemed to have abandoned his job. The strike becomes a prohibited activity under the same provision. It is already in itself knowingly participating in an illegal act. (See also *Grand Boulevard Hotel vs. Genuine Labor Organization of Workers in Hotel Restaurant and Allied Industrial [GLOWHRAIN]*; *Grand Boulevard Hotel vs. Dacanay*, G.R. Nos. 153664-65, July 18, 2003).

**b. Effect on employers in case of lockout.**

In case of non-compliance by the employer with the return-to-work order issued in connection with the assumption/certification of the labor dispute, he may be held liable to pay backwages, damages and other positive or affirmative reliefs, even criminal prosecution against him. (*Article 263[g], Labor Code*; Section 4, Rule IX, Rules of Procedure of the NLRC, as amended by NLRC Resolution No. 01-02, Series of 2002).

Employers who refuse to re-admit returning workers may be liable, upon filing of proper petition for the payment of wages and other benefits, from the date of actual refusal until the workers are re-admitted. (No. 24, Guidelines Governing Labor Relations).

**c. Effect on the legality of strike.**

The strike is illegal because of the brazen disregard of the return-to-work order of the Secretary. (*Union of Filipino Employees, vs. Nestle Philippines, Inc.*, G. R. No. 88710-13, Dec. 19, 1990; *Liberal Labor Union vs. Phil. Can Co.*, 91 Phil. 72; *PAL vs. PALEA*, G. R. No. L-8197, Oct. 31, 1958).

Where the return-to-work order is issued pending the determination of the legality of the strike, it is not correct to say that it may be enforced only if the strike is legal and may be disregarded if the strike is illegal. Precisely, said the Supreme Court in *Asian Transmission Corporation vs. NLRC*, [G. R. No. 88728, Nov. 22, 1989], the purpose of the return-to-work order is to maintain the *status quo* while the determination is being made. Otherwise, the workers who contend that the strike is legal can refuse to return to their work and use a standstill in the company operations while retaining the positions they refuse to discharge or allow the management to fill. Worse, they will also claim payment for work not done, on the ground that they are still legally employed although actually engaged in activities inimical to their employer's interest.

**d. Contempt citation.**

The Secretary of Labor and Employment may cite the defiant party in contempt pursuant to the power vested in him under the provisions of the Labor Code. (*No. 035, Primer on Strike, Picketing and Lockout*).

**e. Refusal to acknowledge receipt of assumption order.**

Admittedly, in many instances, it is difficult to serve assumption or certification orders. The aversion to receive such orders is understandable. If a strike has not yet been staged, receipt of the order would mean that the strike can no longer push through. All preparations, therefore, would all be put to naught. If a strike is on-going, receipt of such order would mean that the strike has to end. Any further continuation thereof would be fatal as it may result in the loss of employment status of the defiant strikers.

The Supreme Court is aware of this difficulty of serving said orders on striking unions and their members who invariably view the DOLE's process servers with suspicion and hostility. The refusal to receive such orders and other processes is, as described by the Supreme Court in one case, "an apparent attempt to frustrate the ends of justice." (*Navale vs. CA*, 253 SCRA 705).

Such being the case, the Supreme Court said that it cannot allow the union to thwart the efficacy of the assumption and return-to-work orders issued in the national interest, through the simple expediency of refusing to acknowledge receipt thereof.

The 2000 case of **Telefunken Semiconductors Employees Union-FFW vs. CA**, [G. R. Nos. 143013-14, December 18, 2000], presents a good study on this point. Petitioners here claimed that the assumption and return-to-work orders issued by the Secretary of Labor were allegedly inadequately served upon them. The Supreme Court, however, found this contention untenable in the light of what had already been clearly established in this case, to wit:

"x x x, the reports of the DOLE process server, shows that the Notice of Order of 8 September 1995 was actually served on the Union President. The latter, however, *refused to acknowledge receipt* of the same on two separate occasions (on 8 September 1995 at 7:15 p.m. and on 11 September 1995 at 9:30 a.m.). The Union's counsel of record, Atty. Allan Montano, similarly refused to acknowledge receipt of the 8 September 1995 Order on 9 September 1995 at 1:25 p.m.

**"Records also show that the Order of 16 September 1995 was served at the strike area with copies left with the striking workers, per the process server's return, although a certain Virgie Cardenas also refused to acknowledge receipt. The Federation of Free Workers officially received a copy as acknowledged by a certain Lourdes at 3:40 p.m. of 18 September 1995.**

“The foregoing clearly negate the Union’s contention of inadequate service of the Orders dated 8 and 16 September 1995 of Acting Secretary Brillantes. Furthermore, the DOLE process server’s discharge of his function is an official act carrying the presumption of regularity in its performance which the Union has not disproved, much less disputed with clear and convincing evidence.

“Likewise, it would be stretching the limits of credibility if We were to believe that the Union was unaware of the said Orders during all the conciliation conferences conducted by the NCMB-DOLE. Specifically, in the conciliation meetings after the issuance of the Order of 8 September 1995 to settle the unresolved CBA issues and after the issuance of the Order of 16 September 1995 to establish the mechanics for a smooth implementation of this Office’s return-to-work directive, the Union – with its officers and members in attendance – never questioned the propriety or adequacy by which these Orders were served upon them.”

***f. The certification/assumption order may be served at any time of the day.***

To cast doubt on the regularity of the aforesaid service of the two Orders issued by the Secretary of Labor, petitioners in *Telefunken* [supra] cite *Section 1, Rule IX of the NLRC Manual on Execution of Judgment* which provides that:

“**Section 1. Hours and Days When Writ Shall Be Served.** – Writ of Execution shall be served at any day, except Saturdays, Sundays and holidays, between the hours of eight in the morning and five in the afternoon. x x x”

However, the Supreme Court observed that the above-cited rule is not applicable to the case at bar inasmuch as *Sections 1 and 4, Rule III* of the same *NLRC Manual* provide that such “*execution shall issue only upon a judgment or order that finally disposes of an action or proceeding.*” The assumption and return-to-work orders issued by the Secretary of Labor in the case at bar are not the kind of orders contemplated in the immediately cited rule of the NLRC because such orders of the Secretary of Labor did not yet finally dispose of the labor dispute. As pointed out by the Secretary of Labor in his decision, petitioners cannot now feign ignorance of his official intervention, to wit:

“The admissibility of the evidence presented by the Company, however, has been questioned. The Union’s arguments are less than convincing. The numerous publications of the subject DOLE Orders in various newspapers, tabloids, radio and television cannot be considered hearsay and subject to authentication considering that the subject thereof were the lawful Orders of a competent government authority. In the case of the announcements posted on the Union’s bulletin board, pictures of which were presented by the Company in evidence, suffice it for us to state that the bulletin board belonged to the Union. Since the veracity of the contents of the announcements on the bulletin board were never denied by the Union except to claim that these were ‘self-serving, unverified/unverifiable and thus utterly inadmissible,’ We cannot but admit the same for the purpose for which it was presented.”

***g. Period of defiance of return-to-work order, not material.***

It is well-settled that the length of time within which the return-to-work order was defied is not significant in determining the liability of the defiant party to the legal consequences thereof.

The argument, therefore, should be rejected that since the defiance of the return-to-work order did not last for five (5) months as in the case of **Sarmiento vs. Tuico**, [G. R. No. 75271-73, June 27, 1988], the defiant workers should not be dismissed. It is clear from the law that from the moment a worker defies a return-to-work order, he is deemed to have abandoned his job. It is already in itself knowingly participating in an illegal act. Otherwise, the worker will just simply refuse to return to his work and cause a standstill in the company operations while retaining the position he refused to discharge or allow management to fill.

In **Federation of Free Workers vs. Inciong**, [G. R. No. L-49983, April 20, 1992], the termination from work of the strikers who defied the return-to-work order for only nine (9) days was upheld.

**171. Power to assume or certify strikes or lockouts in hospitals, clinics and medical institutions.**

The DOLE Secretary may immediately assume jurisdiction over the labor dispute **within 24 hours** from his knowledge thereof. In labor disputes adversely affecting the continued operation of such hospitals, clinics or medical institutions, it shall be the duty of the striking union or locking-out employer to provide and maintain an effective skeletal workforce of medical and other health personnel, whose movement and services shall be unhampered and unrestricted, as are necessary to insure the proper and adequate protection of the life and health of its patients, most especially emergency cases, for the duration of the strike or lockout.

**172. May employees in the government service conduct strike?**

Concerted activities and strikes in the government service are not allowed because the terms and conditions of government employment are governed by law. Government employees may, however, organize government employees' organizations and may negotiate certain terms and conditions of employment **except**: (1) those requiring appropriations; or (2) exercise of prerogatives.

**173. What is the effect of the illegality of strike on employment of strikers?**

The rule is different for union officers, as distinguished from ordinary members of the union.

The mere declaration of the illegality of strike would result in the termination of employment of **union officers**. They are deemed to have lost their employment status. This adverse consequence does **not** apply to ordinary union members **except** when they participated in the commission of illegal acts in the course of the strike, in which case, they shall be deemed to have also lost their employment status.

**174. Who are the "union officers" who should be terminated as a result of illegal strike?**

As to who the union officers are for purposes of determining liability for the illegal strike, the Supreme Court held in *CCBPI Postmix Workers Union vs. NLRC*, [G. R. No. 114521, Nov. 27, 1998] that the certifications issued by the Chief of the Labor Organization Division of the Bureau of Labor Relations, as to the union officers, being public records, enjoy the presumption of regularity and deserve weight and probative value. Thus, in the absence of clear and convincing evidence that they are flawed, they should be taken on its face value.

With respect to the company's allegation that by being signatories to the CBA, and the Memorandum and Amendments, the concerned employees have effectively represented themselves as union officers, the Supreme Court ruled in the same case that that such did not sufficiently establish the status of the employees as union officers *during* the illegal strike. Especially so when they signed said documents as mere witnesses.

Neither were their active roles during the bargaining negotiations may be considered as evidence of their being union officers. Quite interestingly, in situations such as negotiations and strikes, union officers could not have the monopoly of action and reaction. Finding themselves to be similarly situated, the union members, stimulated by rising emotions, joined their leaders and immersed themselves in the dealings and negotiations. (*Coca-Cola Bottlers Phils, Inc. vs. NLRC*, G. R. No. 123491, Nov. 27, 1998, 299 SCRA 410).

**a. Only the union officers during the strike are liable.**

It must be emphasized that the penalty of dismissal could be imposed only on union officers serving and acting as such during the period of illegal strike. (*Lapanday Workers Union vs. NLRC*, 248 SCRA 95, 106).

As a necessary implication, if employees acted as union officers *after* said strike, they may not be held liable and, therefore, could not be terminated. (*CCBPI Postmix Workers Union vs. NLRC, supra*).

**b. No wholesale forfeiture of employment status.**

In **Telefunken Semiconductors Employees Union-FFW vs. Secretary of Labor and Employment**, [G. R. Nos. 122743 and 127215, Dec. 12, 1997, 283 SCRA 145], it was held that declaration of a wholesale forfeiture of employment status of all those who participated in the strike is not allowed if there was inadequate service of the certification order on the union as of the date the strike was declared and there was no showing that the striking members had been apprised of such order by the union. The mere filing of charges against an employee for alleged illegal acts during a strike does not by itself justify his dismissal. The charges must be proved at an investigation duly called where the employee shall be given an opportunity to defend himself. This is true even if the alleged ground constitutes a criminal offense. (*See also Batangas Laguna Tayabas Bus Company vs. NLRC, G. R. No. 101858, Aug. 21, 1992, 212 SCRA 792, 799-801*).

**c. Union officers ordered dismissed despite illegal strike for only 1 day.**

Invoking compassion, petitioner-union in **Samahang Manggagawa sa Sulpicio Lines, Inc. – NAFLU vs. Sulpicio Lines, Inc.**, [G. R. No. 140992, March 25, 2004] pleads that its officers who participated in the one-day strike should not be dismissed from the service, considering that respondent's business activities were not interrupted, much less paralyzed. While we sympathize with their plight, said the Supreme Court, however, we must take care that in the contest between labor and capital, the results achieved are fair and in conformity with the law. It is worth reiterating that the strike is illegal for failure of petitioner to submit the strike vote to the Department of Labor and Employment at least seven (7) days prior thereto. Also, petitioner failed to prove that respondent company committed any unfair labor practice. Amid this background, the participation of the union officers in an illegal strike forfeits their employment status.

**175. Who are strike breakers?**

A **strike breaker** is any person who obstructs, impedes or interferes with by force, violence, coercion, threats, or intimidation any peaceful picketing by employees during any labor controversy affecting wages, conditions of work or in the exercise of right to self-organization or collective bargaining. Use or employment of strike breakers is **prohibited** by law.

**176. What is the nature of the ingress to and egress from the establishment subject of the strike?**

The ingress to (entrance) and egress from (exit) the establishment struck against are not part of the strike area and, thus, may not be blocked or picketed. (*No. 025, Primer on Strike, Picketing and Lockout*).

Peaceful ingress and egress of workers who may want to work and those of third parties transacting lawful business with the company under strike is legal. (*Progressive Workers Union vs. Aguas, 150 SCRA 429*).

**177. What is the rule on hiring of replacements?**

**a. Hiring of replacements, when permanent.**

As a general rule, the hiring of replacements for the strikers during a strike is not an unfair labor practice act of an employer. He is entitled to do it in his effort to carry on the business. Such hiring may even be done on a permanent basis in the case of an *economic* strike. And in the event that the strikers decide to resume their work, the employer is not duty-bound to dismiss said permanent replacements. (*Consolidated Labor Association of the Philippines vs. Marsman & Co., G. R. Nos. L-17038 and L-17057, July 31, 1964*).

**b. Hiring of replacements, when not permanent.**

But in an *unfair labor practice* strike, such replacements may not be permanently employed. The employer is duty-bound to discharge them when the strikers are reinstated to their former positions. (*The Insular Life Assurance Co., Employees Association vs. Insular Life Assurance Co.*, 37 SCRA 244; *Norton & Harrison Company and Jackbilt Concrete Blocks Co. Labor Union vs. Norton & Harrison Co. and Jackbilt Concrete Blocks Co.*, G. R. No. L-18461, Feb. 10, 1967; *Feati University vs. Bautista*, G. R. No. L-21278, Dec. 27, 1966).

***c. Hiring of replacements for strikers who refuse to return to work.***

Executive Order No. 111 repealed Letter of Instructions No. 1458 dated May 1, 1985 insofar as it allows management to replace striking workers who defy return-to-work orders. (*Section 12, Executive Order No. 111, Dec. 24, 1986*).

However, it was held in *Allied Banking Corporation vs. NLRC*, [G. R. No. 116128, July 12, 1996, 258 SCRA 724], that in case of non-compliance with an assumption or certification order, the Department of Labor and Employment is authorized to impose such sanctions as may be provided for by law which may include the hiring of replacements for workers defying the order.

In case of such defiance of return-to-work order, a hearing is not required in order for the employer to validly hire replacements for strikers who committed the defiance. The reason is, such a sanction is merely provisional to enable the employer to comply with its duties and functions which are closely related to the interest of the public. (*Free Telephone Workers Union vs. PLDT*, 113 SCRA 662; *NLF vs. NLRC*, 139 SCRA 589; *RCPI vs. PCFW*, 58 SCRA 762).

**-END OF PART TWO-**