# STATEMENT OF COVERAGE

This Bar Review 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 2010 Bar Examination. This is presented in five (5) parts: **PART ONE** covers New Laws; **PART TWO** covers Books 1 to 4 of the Labor Code and some important social legislation; **PART THREE** covers Book 5; **PART FOUR** covers Books 6 and 7 of the Labor Code; and **PART FIVE** features the coverage of the 2010 Bar Examination in Labor Law and a survey of all questions given in the Bar Examination in Labor Law for the last twenty (20) years – from 1990 to 2009.

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## LABOR LAWS OF THE PHILIPPINES

### PART THREE

**LABOR RELATIONS LAW**

- **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.

- **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

Existence of employer-employee relationship, pre-requisite of exercise of jurisdiction;
Exception when Labor Arbiters may exercise jurisdiction even absent the employment relationship.

The general rule is that the Labor Arbiter has jurisdiction only over cases involving employer-employee relationship or any cause or action arising therefrom. The exception is presented in the case of Santiago v. CF Sharp Crew Management, Inc., [G.R. No. 162419, July 10, 2007], where the seafarer has already signed a POEA-approved employment contract but was not deployed overseas. It was ruled that despite the absence of an employer-employee relationship between petitioner and respondent, the NLRC has jurisdiction over petitioner’s complaint. The jurisdiction of Labor Arbiters is not limited to claims arising from employer-employee relationships under Section 10 of R. A. No. 8042 (Migrant Workers and Overseas Filipinos Act of 1995) which cover money claims “arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages. xxx”

Considering that petitioner was not able to depart from the airport or seaport in the point of hire, the employment contract did not commence to be effective and no employer-employee relationship was created between the parties. However, a distinction must be made between the perfection of the employment contract and the commencement of the employer-employee relationship. The perfection of the contract, which in this case coincided with the date of execution thereof, occurred when petitioner and respondent agreed on the object and the cause, as well as the rest of the terms and conditions set forth therein. The commencement of the employer-employee relationship would have taken place had petitioner been actually deployed from the point of hire. Thus, even before the start of any employer-employee relationship,
contemporaneous with the perfection of the employment contract was the birth of certain rights and obligations, the breach of which may give rise to a cause of action against the erring party. Thus, if the reverse had happened, that is, the seafarer failed or refused to be deployed as agreed upon, he would have been held liable for damages. (Id.).

• **What is the nature of jurisdiction of Labor Arbiters?**

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

• **What are the cases falling under the jurisdiction of the Labor Arbiters?**

Under Article 217 of the Labor Code, Labor Arbiters have jurisdiction over the following cases:

1. Unfair labor practice (ULP) cases;
2. Termination disputes (or illegal dismissal cases);
3. Money claims which may be classified into two (2):
   a. Any money claim, regardless of amount, *accompanied with a claim for reinstatement* (which necessarily involves termination of employment as the principal action); or
   b. 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)

   **Exception:** Money claims for Employees’ Compensation, Social Security, PhilHealth (formerly Medicare) and maternity benefits, are not cognizable by the Labor Arbiters since these claims are cognizable by other government agencies, such as SSS and Philippine Health Insurance Corporation.

4. Claims for damages (actual, moral, exemplary damages and attorney’s fees) 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*.

• **Besides money claims cognizable under Article 217 of the Labor Code, what are the other money claims cases falling under the jurisdiction of the Labor Arbiters?**

Additionally, Labor Arbiters have jurisdiction over the following:

1. **MONEY CLAIMS** of Overseas Filipino workers (OFWs), including disability and death benefits under R. A. No. 8042, otherwise known as the “Migrant Workers and Overseas Filipinos Act of 1994,” as amended by R.A. No. 10022 [March 8, 2010], Section 10 of which now states as follows:
"SEC. 10. Money Claims. - Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damage. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry."

2. CONTESTED CASES under the exception clause of Article 128[b] of the Labor Code, as amended by R.A. No. 7730, which states:

“xxx. The Secretary or his duly authorized representatives shall 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.”

In interpreting the afore-quoted provision of the exception clause, the Supreme Court, in the 2007 case of *Ex-Bataan Veterans Security Agency, Inc. v. The Secretary of Labor Laguesma*, [G.R. No. 152396, November 20, 2007], reiterated the three (3) elements to divest the Regional Director or his representatives of jurisdiction under the exception clause cited in the 1990 case of *SSK Parts Corporation v. Camas*, [G.R. No. 85934, January 30, 1990, 181 SCRA 675] and the 1999 case of *Batong Buhay Gold Mines, Inc. v. Sec. Dela Serna*, [G.R. No. 86963, August 6, 1999, 370 Phil. 872], to wit:

1. that the employer contests the findings of the labor regulations officer and raises issues thereon;
2. that in order to resolve such issues, there is a need to examine evidentiary matters; and
3. that such matters are not verifiable in the normal course of inspection. *(See also Section 1[b], Rule III of the Rules on the Disposition of Labor Standards Cases in the Regional Offices [September 16, 1987]).*

Resultantly, if the said elements are present and, therefore, the labor standards case is covered by said exception clause, then the Regional Director will have to endorse the case to the appropriate Labor Arbiters of the Arbitration Branch of the NLRC. It was thus held in *Ex-Bataan*:

“xxx. the visitorial and enforcement powers of the DOLE Regional Director to order and enforce compliance with labor standard laws can be exercised even where the individual claim exceeds P5,000.”

“However, if the labor standards case is covered by the exception clause in Article 128(b) of the Labor Code, then the Regional Director will have to endorse the case to the appropriate Arbitration Branch of the NLRC. In order to divest the Regional Director or his representatives of jurisdiction, the following elements must be present: (a) that the employer contests the findings of the labor
regulations officer and raises issues thereon; (b) that in order to resolve such issues, there is a need to examine evidentiary matters; and (c) that such matters are not verifiable in the normal course of inspection. The rules also provide that the employer shall raise such objections during the hearing of the case or at any time after receipt of the notice of inspection results."

It is clear from the foregoing discussion that despite the removal of the restrictive effect of Article 217 on the amount of monetary claim exceeding P5,000.00 under the amendatory provision of R.A. No. 7730, the Labor Arbiter may still exercise jurisdiction over contested cases falling under the exception clause in Article 128 [b] which may be endorsed to him by the DOLE Regional Director when the three (3) elements to divest the latter or his duly authorized representatives of jurisdiction under the exception clause are present.

• When matters are not considered verifiable in the normal course of inspection.

In connection with No. 3 element above (that such matters are not verifiable in the normal course of inspection), the key requirement for the Regional Director and the DOLE Secretary to be divested of jurisdiction is that the evidentiary matters are not verifiable in the course of inspection. Where the evidence presented was verifiable in the normal course of inspection, even if presented belatedly by the employer, the Regional Director, and later the DOLE Secretary, may still examine them; and these officers are not divested of jurisdiction to decide the case. (Bay Haven, Inc. v. Abuan, [infra]).

According to Ex-Bataan Veterans Security Agency, Inc. v. The Secretary of Labor Laguesma, [G.R. No. 152396, November 20, 2007], pieces of evidence are considered verifiable in the normal course of inspection if they consist of employment records of the employees which are required to be kept and maintained in or about the premises of the workplace where they are regularly assigned. (See also Implementing Rules of Book III, Rule X, Section 11).

In the 2008 case of Bay Haven, Inc. v. Abuan, [G.R. No. 160859, July 30, 2008], petitioners' pieces of evidence of the alleged contract of lease, payroll sheets, and quitclaims were all verifiable in the normal course of inspection and, granting that they were not examined by the labor inspector, they have nevertheless been thoroughly examined by the Regional Director and the DOLE Secretary. For these reasons, the exclusion clause of Art. 128(b) does not apply.

• When matters are considered verifiable in the normal course of inspection.

In Red V Coconut Products, Ltd. v. Leogardo, Jr., [G.R. No. 72247, April 10, 1992], the Supreme Court agreed with the opinion of the Solicitor General that this case falls within the exception under Article 128 [b] and, therefore, the Regional Director and public respondent Deputy Minister of Labor have no jurisdiction over the subject money claims since petitioner contests the findings of the Labor Standard Inspectors and presents intricate questions of law. The issue presented by petitioner - how Wage Order No. 2 which provided for wage increases effective on July 6, 1983 and October 1, 1983 should be interpreted and applied - will necessitate the examination of evidentiary matters not verifiable in the normal course of inspection. Hence, the Labor Arbiter has jurisdiction to resolve the same and not the Regional Director or the DOLE Secretary.

It is clear from the foregoing discussion that despite the removal of the restrictive effect of Article 217 on the amount of monetary claim exceeding P5,000.00 under the amendatory provision of R.A. No. 7730, the Labor Arbiter may still exercise jurisdiction over contested cases falling under the exception clause in Article 128 [b] which should be endorsed to him by the
DOLE Regional Director when the three (3) elements to divest the latter or his duly authorized representatives of jurisdiction are present.

• **Filing of a motion to dismiss grounded on lack of jurisdiction is not the contest contemplated under Article 128.**

  In the case of *Batong Buhay Gold Mines, Inc. v. Sec. Dela Serna*, [G.R. No. 86963, August 6, 1999, 370 Phil. 872], it was held that raising lack of jurisdiction in a Motion to Dismiss is not the contest contemplated by the exception clause under Article 128 [b] of the Labor Code which would take the case out of the jurisdiction of the Regional Director and bring it before the Labor Arbiter.

• **Mere disagreement with the findings of the labor officer or the act of presenting controverting evidence is not the contest conceived under Article 128.**

  *Bay Haven, Inc. v. Abuan*, [G.R. No. 160859, July 30, 2008], instructs that the mere disagreement by the employer with the findings of the labor officer, or the simple act of presenting controverting evidence, does not automatically divest the DOLE Secretary or any of his authorized representatives such as the regional directors, of jurisdiction to exercise their visitorial and enforcement powers under the Labor Code.

• **What is the effect of rehabilitation receivership 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.

• **What is the effect of rehabilitation receivership on monetary claims of workers?**

  Rehabilitation receivership of a company issued by the SEC (now RTC, by virtue of R. A. No. 8799, the Securities Regulation Code) has the effect of suspending all proceedings – at whatever stage it may be found - 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. If due for execution, no such execution may be had. Any proceeding made during the effectivity of the rehabilitation receivership is null and void. In fact, to proceed with the labor proceedings is grave abuse of discretion.

  Only when there is liquidation that the monetary claims may be asserted. 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.

• **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 the Grievance Committee and if unresolved, with the Voluntary Arbitrator or panel of Voluntary Arbitrators.
Labor Arbiters have jurisdiction over the issue of legality of strikes and lockouts, except those staged in industries indispensable to the national interest which may be assumed by the DOLE Secretary and decide the issues himself or certify them to the NLRC for compulsory arbitration.

**What is the jurisdictional interplay in strike or lockout cases?**

As distinguished from the other labor cases, a labor dispute involving a strike or lockout is unique as it involves an interplay of several labor officials or tribunals. Confusion usually arises as to when the said labor officials or tribunals can properly take cognizance of strike-related or lockout-related issues. Based on the pertinent provisions of the Labor Code, there is really no overlap or conflict in the exercise of jurisdiction of each one of them. Below is an outline of the interplay in jurisdiction among said officials and tribunals.

1. **Filing of a notice of strike or lockout with NCMB.** A union which intends to stage a strike or an employer which desires to mount a lockout should file a notice of strike or notice of lockout, as the case may be, with the NCMB and not with any other office. It must be noted, however, that the Conciliators-Mediators of the NCMB do not have any decision-making power. They cannot issue decisions to resolve the issues raised in the notice of strike or lockout. Their role is confined solely to the conciliation and mediation of the said issues, although they can suggest to the parties that they submit their dispute to voluntary arbitration through the Voluntary Arbitrators accredited by the NCMB.

2. **Filing of a complaint to declare the illegality of the strike or lockout with the Labor Arbiter or Voluntary Arbitrator or panel of Voluntary Arbitrator.** In case a party wants to have the strike or lockout declared illegal, a complaint should be filed either with the Labor Arbiter under Article 217 [a] (5) of the Labor Code or, upon mutual agreement of the parties, with the Voluntary Arbitrator or panel of Voluntary Arbitrators under Article 262 of the same Code. The issue of illegality of the strike or lockout cannot be resolved by the Conciliators-Mediators of the NCMB as earlier pointed out and discussed.

3. **Filing of an injunction petition with the Commission (NLRC).** In case illegal acts violative of Article 264 are committed in the course of the strike or lockout, a party may file a petition for injunction directly with the Commission (NLRC) under Article 218 [e] of the Labor Code for purposes of securing a temporary restraining order (TRO) and injunction. The Labor Arbiters or Voluntary Arbitrators are not possessed of any injunctive power under the Labor Code. In other words, the aggrieved party, despite the pendency of the case for the declaration of the illegality of the strike or lockout with the Labor Arbiter or Voluntary Arbitrator, as the case may be, may directly go to the Commission to secure the injunctive relief.

4. **Assumption of jurisdiction by the DOLE Secretary or exercise of jurisdiction by the NLRC over a certified case.** In case the strike or lockout affects the national interest as contemplated under Article 263 [g] of the Labor Code, the DOLE Secretary may either assume jurisdiction over it and decide it himself or certify it to the NLRC for compulsory arbitration, in which case, it will be the NLRC which shall hear and decide it. In case at the time of the assumption or certification, there is a pending case before the Labor Arbiter or Voluntary Arbitrator on the issue of illegality of the strike or lockout, the same shall be deemed subsumed in the assumed or certified case. Resultantly, it is no longer the Labor Arbiter or the Voluntary
Arbitrator who should decide the said issue but the DOLE Secretary, in the case of assumed cases, or the NLRC, in the case of certified cases.

5. Submission of a national interest case to voluntary arbitration. Despite the pendency of the assumed or certified national interest case, the parties are allowed to submit any issues raised therein to voluntary arbitration at any stage of the proceeding by virtue of Article 263 [h] which provides that “(b)efore or at any stage of the compulsory arbitration process, the parties may opt to submit their dispute to voluntary arbitration.”

6. Assumption of jurisdiction over a national interest case by the President. The President of the Philippines is not precluded from intervening in a national interest case by exercising the powers of his alter ego, the DOLE Secretary, himself under Article 263 [g] by assuming jurisdiction over the same for purposes of settling or terminating it.

The foregoing interplay explains why Article 263 [i] makes specific reference to the President of the Philippines, the Secretary of Labor and Employment, the Commission (NLRC) or the Voluntary Arbiter in connection with the law on strike, lockout and picketing embodied in Article 263. The only labor official not so mentioned therein but who has a significant role to play in the interaction of labor officials and tribunals in strike or lockout cases, is the Labor Arbiter. This is understandable in the light of the separate express grant of jurisdiction to the Labor Arbiters under Article 217 [a] (5) as above discussed.

• 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 2005 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.

• 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.

• Is a termination dispute (or illegal dismissal case) 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 Arbiter, 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.

- **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.

- **Do Labor Arbiters have jurisdiction over an illegal dismissal case involving priests and religious ministers?**

  The fact that a case involves as parties thereto the church and its religious minister does not *ipso facto* give the case a religious significance. Simply stated, what is involved in a labor case, say for illegal dismissal, is the relationship of the church, as an employer, and the minister, as an employee - a purely secular matter not related to the practice of faith, worship or doctrines of the church. Hence, Labor Arbiters may validly exercise jurisdiction over said labor case.

  In Austria v. Hon. NLRC and Cebu City Central Philippines Union Mission Corporation of the Seventh Day Adventist, [G.R. No. 124382, August 16, 1999], the minister was not excommunicated or expelled from the membership of the church but was terminated from employment based on the grounds cited in Article 282 of the Labor Code. Indeed, the matter of terminating an employee which is purely secular in nature is different from the ecclesiastical act of expelling a member from the religious congregation. As such, the State, through the Labor Arbiter and the NLRC, has the right to take cognizance of the case to determine whether the church, as employer, rightfully exercised its management prerogative to dismiss the religious minister as its employee.

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

  **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
10

(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, 13th 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.

• A corporate officer may also be an employee whose dismissal may vest jurisdiction on the Labor Arbiter.

A corporate officer may also be, at the same time, an employee, as held in Rural Bank of Coron [Palawan]. Inc. vs. Cortes. [G.R. No. 164888, Dec. 6, 2006]. While, indeed, respondent was the Corporate Secretary of the Rural Bank of Coron, she was also its Financial Assistant and the Personnel Officer of the two other petitioner corporations. The case of Mainland Construction Co., Inc. vs. Movilla, [320 Phil, 353 (1995)], instructs that a corporation can engage its corporate officers to perform services under a circumstance which would make them employees. The Labor Arbiter has thus jurisdiction over respondent’s complaint.

• What are the latest cases involving the issue of jurisdiction over cases filed by corporate officers?

- Gómez v. PNOC Development and Management Corp., [G.R. No. 174044, November 27, 2009]


Petitioner Leslie Okol was first hired by respondent firm as a management trainee and later she rose up the ranks to become Head Office Manager and then Director and Vice President of respondent company until her dismissal on 22 September 1999.

The issue presented is whether she is a corporate officer and, therefore, her dismissal is in the nature of an intra-corporate dispute cognizable by the regular court under Section 5 of R. A. No. 8799 and not by the Labor Arbiter.
In holding that she is a corporate officer and that her dismissal is an intra-corporate dispute, the Supreme Court pronounced that clearly, from the documents submitted by respondents, petitioner was a director and officer of Slimmers World. The charges of illegal suspension, illegal dismissal, unpaid commissions, reinstatement and back wages imputed by petitioner against respondents fall squarely within the ambit of intra-corporate disputes. In a number of cases, the Supreme Court has held that a corporate officer’s dismissal is always a corporate act, or an intra-corporate controversy which arises between a stockholder and a corporation. The question of remuneration involving a stockholder and officer, not a mere employee, is not a simple labor problem but a matter that comes within the area of corporate affairs and management and is a corporate controversy in contemplation of the Corporation Code.

Gomez v. PNOC Development and Management Corp., [G.R. No. 174044, November 27, 2009]

This case is about what distinguishes a regular company manager performing important executive tasks from a corporate officer whose election and functions are governed by the company’s by-laws.

Ordinary company employees are generally employed not by action of the directors and stockholders but by that of the managing officer of the corporation who also determines the compensation to be paid such employees. Corporate officers, on the other hand, are elected or appointed by the directors or stockholders, and are those who are given that character either by the Corporation Code or by the corporation’s by-laws.

Here, it was the president of PNOC Development and Management Corp., (PDMC) who appointed petitioner Gomez administrator, not its board of directors or the stockholders. The president alone also determined her compensation package. Moreover, the administrator was not among the corporate officers mentioned in the PDMC by-laws. The corporate officers proper were the chairman, president, executive vice-president, vice-president, general manager, treasurer, and secretary.

Respondent PDMC claims, however, that since its board had under its by-laws the power to create additional corporate offices, it may be deemed to have simply ratified its president’s creation of the corporate position of administrator. But creating an additional corporate office was definitely not respondent PDMC’s intent based on its several actions concerning the position of administrator.

But the relationship of a person to a corporation, whether as officer or agent or employee, is not determined by the nature of the services he performs but by the incidents of his relationship with the corporation as they actually exist. Here, respondent PDMC hired petitioner Gomez as an ordinary employee without board approval as was proper for a corporate officer. When the company got her the first time, it agreed to have her retain the managerial rank that she held with Petron. Her appointment paper said that she would be entitled to all the rights, privileges, and benefits that regular PDMC employees enjoyed. This is in sharp contrast to what the former PDMC president’s appointment paper stated: he was elected to the position and his compensation depended on the will of the board of directors.

What is more, respondent PDMC enrolled petitioner Gomez with the Social Security System, the Medicare, and the Pag-IBig Fund. It even issued certifications dated October 10, 2008, stating that Gomez was a permanent employee and that the company had remitted...
combined contributions during her tenure. The company also made her a member of the PDMC’s savings and provident plan and its retirement plan. It grouped her with the managers covered by the company’s group hospitalization insurance. Likewise, she underwent regular employee performance appraisals, purchased stocks through the employee stock option plan, and was entitled to vacation and emergency leaves. PDMC even withheld taxes on her salary and declared her as an employee in the official Bureau of Internal Revenue forms. These are all indicia of an employer-employee relationship which respondent PDMC failed to refute.

That petitioner Gomez served concurrently as corporate secretary for a time is immaterial. A corporation is not prohibited from hiring a corporate officer to perform services under circumstances which will make him an employee. Indeed, it is possible for one to have a dual role of officer and employee. In *Elleccion Vda. De Lecciones v. National Labor Relations Commission*, the Court upheld NLRC jurisdiction over a complaint filed by one who served both as corporate secretary and administrator, finding that the money claims were made as an employee and not as a corporate officer.


In this case, the by-laws of ETPI provide:

ARTICLE V
Officers

Section 1. *Number.* – The officers of the Company shall be a Chairman of the Board, a President, one or more Vice-Presidents, a Treasurer, a Secretary, an Assistant Secretary, and such other officers as may be from time to time be elected or appointed by the Board of Directors. One person may hold any two compatible offices.

Atty. Garcia tries to deny he is an officer of ETPI. Not being a corporate officer, he argues that the Labor Arbiter has jurisdiction over the case. One of the corporate officers provided for in the by-laws of ETPI is the Vice-President. It can be gathered from Atty. Garcia’s complaint-affidavit that he was **Vice President for Business Support Services and Human Resource Departments** of ETPI when his employment was terminated effective 16 April 2000. It is, therefore, clear from the by-laws and from Atty. Garcia himself that he is a corporate officer. 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. Being a corporate officer, his removal is deemed to be an intra-corporate dispute cognizable by the SEC and not by the Labor Arbiter.

We agree with both the NLRC and the Court of Appeals that Atty. Garcia’s ouster as Vice-President, who is a corporate officer of ETPI, partakes of the nature of an intra-corporate controversy, jurisdiction over which is vested in the SEC (now the RTC). The Labor Arbiter thus erred in assuming jurisdiction over the case filed by Atty. Garcia, because he had no jurisdiction over the subject matter of the controversy.

**JURISDICTION OVER CASES FILED BY EMPLOYEES OF 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.

**JURISDICTION OVER EMPLOYEES OF IMMUNE ENTITIES.**

Labor Arbiters have no jurisdiction over labor cases involving entities immune 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), in the case of Department of Foreign Affairs vs. NLRC, et al., [G. R. No. 113191, September 18, 1996, 262 SCRA 39, 43-44], 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.

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.

**DOCTRINE OF FORUM NON CONVENIENS.**

- **What is the doctrine of forum non conveniens? May this international law principle 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.

Citing the ruling in PNB vs. Cabansag [supra], the High Court in Sim vs. NLRC, [G.R. No. 157376, October 2, 2007], noted a palpable error in the Labor Arbiter’s disposition of the case, which was affirmed by the NLRC, with regard to the issue on jurisdiction. It held that it was wrong for the Labor Arbiter to dismiss the case for lack of jurisdiction under its holding that “labor relations system in the Philippines has no extra-territorial jurisdiction”; that “it is limited to the relationship between labor and capital within the Philippines”; and that “since complainant was hired and assigned in a foreign land, although by a Philippine Corporation, it follows that the law that governs their relationship is the law of the place where the employment was executed and her place of work or assignment.”

The petitioner here was Corazon Sim who was initially employed by Equitable PCI-Bank (respondent) in 1990 as Italian Remittance Marketing Consultant to the Frankfurt Representative Office. Eventually, she was promoted to Manager position until September 1999,
when she received a letter from Remegio David -- the Senior Officer, European Head of PCIBank, and Managing Director of PCIB- Europe -- informing her that she was being dismissed due to loss of trust and confidence based on alleged mismanagement and misappropriation of funds. According to the Supreme Court, the Labor Arbiter has jurisdiction not only on the basis of Article 217 of the Labor Code but under Section 10 of Republic Act No. 8042, or the Migrant Workers and Overseas Filipinos Act of 1995, as well as Section 62 of the Omnibus Rules and Regulations Implementing R.A. No. 8042. Under these provisions, it is clear that Labor Arbiters have original and exclusive jurisdiction over claims arising from employer-employee relations, including termination disputes involving all workers, among whom are overseas Filipino workers. (Id.).

The principle of *forum non conveniens* was also invoked by petitioners in *Pacific Consultants International Asia, Inc. vs. Schonfeld*, [G.R. No. 166920, Feb. 19, 2007]. Petitioners insisted on the application of the said principle since the respondent is a Canadian citizen and was a repatriate. In rejecting petitioner’s contention, the Supreme Court cited the following reasons that do not warrant the application of the said principle:

*First.* The Labor Code of the Philippines does not include *forum non conveniens* as a ground for the dismissal of the complaint. (See PHILSEC Investment Corporation vs. CA, G.R. No. 103493, June 19, 1997, 274 SCRA 102).

*Second.* The propriety of dismissing a case based on this principle requires a factual determination; hence, it is properly considered as defense. (Id.).

*Third.* In *Bank of America, NT&SA, Bank of America International, Ltd. vs. Court of Appeals*, [448 Phil. 181, 196 (2003)], it was held that:“xxx [a] Philippine Court may assume jurisdiction over the case if it chooses to do so; provided, that the following requisites are met: (1) that the Philippine Court is one to which the parties may conveniently resort to; (2) that the Philippine Court is in a position to make an intelligent decision as to the law and the facts; and, (3) that the Philippine Court has or is likely to have power to enforce its decision. Xxx.”

**JURISDICTION OVER COUNTER-CLAIMS OF EMPLOYERS.**

Almost all labor cases decided by labor courts involve claims asserted by the workers. What if the employers assert claims or counter-claims against their employees? Do Labor Arbiters have jurisdiction over them?

In *Bañez v. Valdevilla*, [G.R. No. 128024, May 9, 2000, 331 SCRA 584], the Supreme Court answered this in the affirmative. It held that presently, as amended by R.A. No. 6715, the jurisdiction of Labor Arbiters and the NLRC under Article 217 is comprehensive enough to include claims for all forms of damages “arising from the employer-employee relations.” By this clause, Article 217 should apply with equal force to the claim of an *employer* for actual damages against its dismissed employee, where the basis for the claim arises from or is necessarily connected with the fact of termination, and should be entered as a counter-claim in the illegal dismissal case. This is in accord with paragraph 6 of Article 217 [a], which covers “all other claims, arising from employer-employee relations.”

In *Domondon v. NLRC*, [G.R. No. 154376, September 30, 2005, 471 SCRA 559], the private respondent-employer was allowed to assert its counter-claim for damages against
petitioner-employee in the same case before the Labor Arbiter because it appears that the same arose out of the parties’ employer-employee relations. It was declared therein that the Labor Arbiter has jurisdiction to take cognizance of said counter-claim.

JURISDICTION OVER CONSTITUTIONALITY OF CBA PROVISIONS.

In Halagueña, et al. v. Philippine Airlines, Inc., {G.R. No. 172013, October 2, 2009}, petitioners were employed as female flight attendants of respondent Philippine Airlines (PAL) on different dates prior to November 22, 1996. They are members of the Flight Attendants and Stewards Association of the Philippines (FASAP), a labor organization certified as the sole and exclusive bargaining representative of the flight attendants, flight stewards and pursers of respondent.

On July 11, 2001, respondent and FASAP entered into a Collective Bargaining Agreement incorporating the terms and conditions of their agreement for the years 2000 to 2005, hereinafter referred to as PAL-FASAP CBA.

Section 144, Part A of the PAL-FASAP CBA, provides that:
A. For the Cabin Attendants hired before 22 November 1996:
   x x x x

3. Compulsory Retirement

Subject to the grooming standards provisions of this Agreement, compulsory retirement shall be fifty-five (55) for females and sixty (60) for males. x x x.

In a letter dated July 22, 2003, petitioners and several female cabin crews manifested that the aforementioned CBA provision on compulsory retirement is discriminatory, and demanded for an equal treatment with their male counterparts. This demand was reiterated in a letter by petitioners' counsel addressed to respondent demanding the removal of gender discrimination provisions in the coming re-negotiations of the PAL-FASAP CBA.

On July 29, 2004, petitioners filed a Special Civil Action for Declaratory Relief with Prayer for the Issuance of Temporary Restraining Order and Writ of Preliminary Injunction with the Regional Trial Court (RTC) of Makati City, Branch 147, docketed as Civil Case No. 04-886, against respondent for the invalidity of Section 144, Part A of the PAL-FASAP CBA.

The Supreme Court ruled that RTC has jurisdiction:

From the petitioners' allegations and relief prayed for in its petition, it is clear that the issue raised is whether Section 144, Part A of the PAL-FASAP CBA is unlawful and unconstitutional. Here, the petitioners' primary relief in Civil Case No. 04-886 is the annulment of Section 144, Part A of the PAL-FASAP CBA, which allegedly discriminates against them for being female flight attendants. The subject of litigation is incapable of pecuniary estimation, exclusively cognizable by the RTC, pursuant to Section 19 (1) of Batas Pambansa Blg. 129, as amended. Being an ordinary civil action, the same is beyond the jurisdiction of labor tribunals.

The said issue cannot be resolved solely by applying the Labor Code. Rather, it requires the application of the Constitution, labor statutes, law on contracts and the Convention on the Elimination of All Forms of Discrimination Against Women, and the power to apply and interpret
the constitution and CEDAW is within the jurisdiction of trial courts, a court of general jurisdiction.

Not every controversy or money claim by an employee against the employer or vice-versa is within the exclusive jurisdiction of the labor arbiter. Actions between employees and employer where the employer-employee relationship is merely incidental and the cause of action precedes from a different source of obligation is within the exclusive jurisdiction of the regular court. Here, the employer-employee relationship between the parties is merely incidental and the cause of action ultimately arose from different sources of obligation, i.e., the Constitution and CEDAW.

Thus, where the principal relief sought is to be resolved not by reference to the Labor Code or other labor relations statute or a collective bargaining agreement but by the general civil law, the jurisdiction over the dispute belongs to the regular courts of justice and not to the labor arbiter and the NLRC. In such situations, resolution of the dispute requires expertise, not in labor management relations nor in wage structures and other terms and conditions of employment, but rather in the application of the general civil law. Clearly, such claims fall outside the area of competence or expertise ordinarily ascribed to labor arbiters and the NLRC and the rationale for granting jurisdiction over such claims to these agencies disappears.

If we divest the regular courts of jurisdiction over the case, then which tribunal or forum shall determine the constitutionality or legality of the assailed CBA provision?

This Court holds that the grievance machinery and voluntary arbitrators do not have the power to determine and settle the issues at hand. They have no jurisdiction and competence to decide constitutional issues relative to the questioned compulsory retirement age. Their exercise of jurisdiction is futile, as it is like vesting power to someone who cannot wield it.

Although the CBA provides for a procedure for the adjustment of grievances, such referral to the grievance machinery and thereafter to voluntary arbitration would be inappropriate to the petitioners, because the union and the management have unanimously agreed to the terms of the CBA and their interest is unified.

**JURISDICTION OVER TAX DEDUCTIONS FROM BENEFITS DUE AN EMPLOYEE.**

In *Santos v. Servier Philippines, Inc.*, [G.R. No. 166377, November 28, 2008], raised as an issue is whether the Labor Arbiter has jurisdiction to rule on the legality of the deductions made by respondent employer from petitioner’s total retirement benefits for taxation purposes. Both the Labor Arbiter and the NLRC ruled that this issue is beyond their jurisdiction. The Supreme Court, however, ruled that contrary to the Labor Arbiter and NLRC’s conclusions, petitioner’s claim for illegal deduction falls within the tribunal’s jurisdiction. It is noteworthy that petitioner demanded the completion of her retirement benefits, including the amount withheld by respondent for taxation purposes. The issue of deduction for tax purposes is intertwined with the main issue of whether or not petitioner’s benefits have been fully given her. It is, therefore, a money claim arising from the employer-employee relationship, which clearly falls within the jurisdiction of the Labor Arbiter and the NLRC.

This is not the first time that the labor tribunal is faced with the issue of illegal deduction. In *Intercontinental Broadcasting Corporation [IBC] v. Amarilla*, [G.R. No. 162775, October 27, 2006, 505 SCRA 687], petitioner IBC withheld the salary differentials due its retired employees to offset the tax due on their retirement benefits. The retirees thus lodged a complaint.
with the NLRC questioning said withholding. They averred that their retirement benefits were exempt from income tax; and IBC had no authority to withhold their salary differentials. The Labor Arbiter took cognizance of the case, and the High Court made a definitive ruling that retirement benefits are exempt from income tax, provided that certain requirements are met.

**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).*
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).*
9. 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).*
10. Claims for commissions and certain reimbursements made by an independent contractor. *(Sara vs. Agarrado, 166 SCRA 625).*
11. 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).*
12. 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).*
14. 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).*

**JURISDICTION OF THE NLRC**

*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.

*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

• 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.

• 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).

• 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/DUALLY AUTHORIZED HEARING OFFICERS.

• 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;
2. the claimant whose employment has been severed does not seek reinstatement; and
3. the aggregate money claim of each employee does not exceed ₱5,000.00.

JURISDICTION OF GRIEVANCE MACHINERY IN THE CBA

• 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

• 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).

• 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.

• In case of conflict, who has jurisdiction over termination disputes, Labor Arbiter or Voluntary Arbiter?

Jurisdiction over termination disputes belongs to Labor Arbiters and NOT with Grievance Machinery nor Voluntary Arbiter

Under Article 262, the Voluntary Arbiter 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

• 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.

• 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)

• 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**

*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**

*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)**

*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 RTWPB 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

• 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

• 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 aspect, including damages, attorney’s fees and other affirmative relief, of unfair labor practices cases.

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

• 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 Arbitrator 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

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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**

- **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

NOTICE: Selling these NOTES is ABSOLUTELY PROHIBITED!!!

(d) If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

• Is the NLRC possessed of certiorari power?

Yes because of the first ground mentioned above, i.e., when there is abuse of discretion on its part. ([Triad Security & Allied Services, Inc. v. Ortega, [G.R. No. 160871, February 6, 2006]])

• 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.

• 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. 10th day falling on a Saturday.

   3. 10th 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 10th 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.

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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.

REINSTATEMENT ASPECT OF THE LABOR ARBITER’S DECISION

• 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, 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.

• Posting of a bond does not stay the execution of immediate reinstatement.

The posting of a bond by the employer does not have the effect of staying the execution of the reinstatement aspect of the decision of the Labor Arbiter.

• Reinstatement pending appeal, ministerial duty of Labor Arbiter.

Unless there is a restraining order issued, it is ministerial upon the Labor Arbiter to implement his order of reinstatement. (Roquero v. Philippine Air Lines, Inc., G.R. No. 152329, April 22, 2003).

• Issuance of a partial writ pending appeal.

In case the decision includes an order of reinstatement and the employer disobeys it or refuses to reinstate the dismissed employee, the Labor Arbiter should immediately issue a writ of execution, even pending appeal, directing the employer to immediately reinstate the dismissed employee either physically or in the payroll, and to pay the accrued salaries as a consequence of such reinstatement at the rate specified in the decision. The Sheriff should serve the writ of execution upon the employer or any other person required by law to obey the same. If he disobeys the writ, such employer or person may be cited for contempt. (Section 6, Rule XI, 2005 Revised Rules of Procedure of the NLRC).

While the perfection of appeal will stay the execution of the decision of a Labor Arbiter, the partial execution for reinstatement pending appeal is not affected by such perfection. (Section 9, Rule XI, Ibid.).

• Award of reinstatement pending appeal is self-executory, no writ of execution required.

In the leading 1997 en banc case of Pioneer Texturizing Corporation v. NLRC, [G.R. No. 118651, October 16, 1997, 280 SCRA 806], the Supreme Court categorically ruled that an award or order of reinstatement is self-executory and, therefore, does not require a writ of execution to implement and enforce it. To require the application for and issuance of a writ of execution as pre-requisite for the execution of a reinstatement award would certainly betray and
run counter to the very object and intent of Article 223, *i.e.*, the immediate execution of a reinstatement order. The reason is simple. An application for a writ of execution and its issuance could be delayed for numerous reasons. A mere continuance or postponement of a scheduled hearing, for instance, or an inaction on the part of the Labor Arbiter or the NLRC, could easily delay the issuance of the writ thereby setting at naught the strict mandate and noble purpose envisioned by Article 223. (See Torres, Jr. v. NLRC, G.R. No. 172584, Nov. 28, 2008; International Container Terminal Services, Inc. [ICTSI] v. NLRC, G.R. No. 115452, Dec. 21, 1998, 300 SCRA 335).

**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.

**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.

- Employer is liable to pay the salaries for the period that the employee was ordered reinstated even if his dismissal is later finally found to be legal.

In the 2003 case of *Roquero v. 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 the issuance of a writ of execution of the order of reinstatement. The Labor Arbiter granted the motion but the employer refused to comply with the said order on the ground that it has filed a Petition for Review before the Supreme Court. Subsequently, the dismissal of the employee was held valid by the Supreme Court. But it held that the unjustified refusal of the employer to reinstate the dismissed employee entitles the latter to the payment of his salaries effective from the time the employer failed to reinstate him despite the issuance of a writ of execution. Unless there is a restraining order issued, it is ministerial upon the Labor Arbiter to implement the order of reinstatement. In the case at bar, no restraining order was granted. Thus, it was mandatory on the employer to actually reinstate the dismissed employee or reinstate him in the payroll. Having failed to do so, the former must pay the latter the salaries he is entitled to, as if he was reinstated, from the time of the decision of the NLRC until the finality of the decision of the Supreme Court.

Following *Roquero*, it is now the norm that even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court. If the employee has been reinstated during the appeal period and such reinstatement order is subsequently reversed on appeal with finality, the employee is not required to reimburse whatever salaries he has received for he is entitled to such, more so if he actually rendered services during the said period.

In the 2006 case of *Air Philippines Corp. v. Zamora*, [G.R. No. 148247, August 7, 2006], the Labor Arbiter ordered the reinstatement of respondent Zamora who immediately filed a motion for execution of the said order of reinstatement. The Labor Arbiter granted the motion and issued a writ of execution directing petitioner APC to reinstate him to his former position. On appeal, the NLRC reversed the ruling of the Labor Arbiter and held that no dismissal, constructive or otherwise, took place for it was respondent Zamora himself who voluntarily terminated his employment by not reporting for work and by joining a competitor - Grand Air. Respondent Zamora filed a Motion for Reconsideration but the NLRC denied it. However, it ordered petitioner APC to pay respondent Zamora his unpaid salaries and allowances in the total amount of P198,502.30 within fifteen (15) days from receipt of its resolution. Displeased with the modification, petitioner APC sought a partial reconsideration of the said resolution but the NLRC denied it and justified the award of unpaid salaries on the ground that “(t)he grant of salaries and allowances to complainant arose from the order of his reinstatement which is executory even pending appeal of respondent questioning the same, pursuant to Article 223 of the Labor Code. In the eyes of the law, complainant was as if actually working from the date respondent received the copy of the appealed decision of the Labor Arbiter directing the reinstatement of complainant based on his finding that the latter was illegally dismissed from employment.”
In affirming the above grant by the NLRC of salaries and allowances to respondent Zamora, the Supreme Court ratiocinated, thus: “The premise of the award of unpaid salaries to respondent is that prior to the reversal by the NLRC of the decision of the Labor Arbiter, the order of reinstatement embodied therein was already the subject of an alias writ of execution even pending appeal. Although petitioner did not comply with this writ of execution, its intransigence made it liable nonetheless to the salaries of respondent pending appeal. There is logic in this reasoning of the NLRC.” (Citing Roquero v. Philippine Airlines, Inc., supra and Aris [Phil.] Inc. v. NLRC, G.R. No. 90501, Aug. 5, 1991, 200 SCRA 246, 255).

The above ruling in Air Philippines was reiterated in the 2008 case of Torres, Jr. v. NLRC, [G.R. No. 172584, November 28, 2008]. Thus, it was held that petitioners should not be compelled to return the salaries and benefits already received by them on account of the order for reinstatement adjudged by the NLRC and affirmed by the Supreme Court.

The principle of reinstatement pending appeal as well as the Roquero doctrine apply only in case there is a finding of illegality of dismissal by the Labor Arbiter.

In the 2009 case of Lansangan v. Amkor Technology Philippines, Inc., [G.R. No. 177026, January 30, 2009], it was held that the principle of reinstatement pending appeal as well as the Roquero doctrinal ruling find application only in case there is a finding of illegality of dismissal by the Labor Arbiter. The petitioners in this case were found by the Labor Arbiter to have committed a dishonest act consisting of:

“[s]wiping another employees’ [sic] I.D. card or requesting another employee to swipe one’s I.D. card to gain personal advantage and/or in the interest of cheating”, an offense of dishonesty punishable as a serious form of misconduct and fraud or breach of trust under Article 282 of the Labor Code:

x x x

which allows the dismissal of an employee for a valid cause. (Emphasis and underscoring supplied)

The Labor Arbiter consequently ruled that the dismissal was valid and legal but he ordered their reinstatement to their former positions without backwages “as a measure of equitable and compassionate relief” owing mainly to petitioners’ prior unblemished employment records, show of remorse, harshness of the penalty and defective attendance monitoring system of respondent.

Based on the foregoing facts, the Supreme Court noted that Roquero, as well as Article 223 of the Labor Code on which the appellate court also relied, finds no application in the present case. Article 223 concerns itself with an interim relief, granted to a dismissed or separated employee while the case for illegal dismissal is pending appeal, as what happened in Roquero. It does not apply where there is no finding of illegal dismissal, as in the present case. Petitioners are not entitled to full backwages as their dismissal was not found to be illegal. Agabon v. NLRC, [G.R. No. 158693, Nov. 17, 2004], so states - payment of backwages and other benefits is justified only if the employee was unjustly dismissed.

If reinstatement was not executed by writ and the finding of illegal dismissal is later reversed, employer is not liable to pay any backwages.
In Panuncillo v. CAP Philippines, Inc., [G.R. No. 161305, February 9, 2007], the Supreme Court ruled that since it has affirmed the challenged decision of the Court of Appeals finding that petitioner was validly dismissed and accordingly reversed the NLRC’s decision that petitioner was illegally dismissed and should be reinstated, petitioner is not entitled to collect any backwages from the time the NLRC decision became final and executory up to the time the Court of Appeals reversed said decision. It ratiocinated, thus: “It does not appear that a writ of execution was issued for the implementation of the NLRC order for reinstatement. Had one been issued, respondent would have been obliged to reinstate petitioner and pay her salary until the said order of the NLRC for her reinstatement was reversed by the Court of Appeals, and following Roquero, petitioner would not have been obliged to reimburse respondent for whatever salary she received in the interim.”

But in the earlier case of Triad Security & Allied Services, Inc. v. Ortega, [G.R. No. 160871, February 6, 2006], the Supreme Court still ordered the payment of backwages for the period when the employees should have been reinstated by order of the Labor Arbiter. In this case, the decision of the Labor Arbiter ordering the reinstatement of the respondents and the payment of their backwages until their actual reinstatement and, in case reinstatement is no longer viable, the payment of separation pay, became final and executory due to the failure of the petitioner to seasonably appeal the same. On the issue of whether backwages should continue to run up to the payment of separation pay, the Supreme Court ruled in the affirmative. It pointed out that an order of reinstatement by the Labor Arbiter is not the same as actual reinstatement of a dismissed or separated employee. Thus, until the employer continuously fails to actually implement the reinstatement aspect of the decision of the Labor Arbiter, its obligation to the dismissed employees, insofar as accrued backwages and other benefits are concerned, continues to accumulate. It is only when the illegally dismissed employee receives the separation pay that it could be claimed with certainty that the employer-employee relationship has formally ceased thereby precluding the possibility of reinstatement. In the meantime, the illegally dismissed employee’s entitlement to backwages, 13th month pay, and other benefits subsists. Until the payment of separation pay is carried out, the employer should not be allowed to remain unpunished for the delay, if not outright refusal, to immediately execute the reinstatement aspect of the Labor Arbiter’s decision.

• Payroll-reinstated employee should refund the salaries he received if his dismissal is finally found legal on appeal; this rule does not apply if the employee was actually reinstated or not reinstated pending appeal.

The ruling in Roquero [supra] was qualified by the Supreme Court in its ruling in the 2007 case of Genuino v. NLRC, [G.R. Nos. 142732-33, December 4, 2007], on the issue of whether the dismissed employee who is reinstated in the payroll and not actually to his former position has the obligation to refund what he has received as and by way of salaries during his payroll reinstatement and, in case reinstatement is no longer viable, the payment of separation pay, became final and executory due to the failure of the employee to seasonably appeal the same. In this case, the Supreme Court had taken the view that “(i)if the decision of the Labor Arbiter is later reversed on appeal upon the finding that the ground for dismissal is valid, then the employer has the right to require the dismissed employee on payroll reinstatement to refund the salaries he/she received while the case was pending appeal, or it can be deducted from the accrued benefits that the dismissed employee was entitled to receive from his/her employer under existing laws, collective bargaining agreement provisions, and company practices. However, if the employee was reinstated to work during the pendency of the appeal, then the employee is entitled to the compensation received for actual services rendered without need of refund. Considering that Genuino was not reinstated to work or placed on payroll reinstatement, and her dismissal
based on a just cause, then she is not entitled to be paid the salaries stated in item no. 3 of the *fallo* of the September 3, 1994 NLRC Decision."

• *Modification of the Roquero and Genuino doctrines.*

In the 2009 case of *Garcia and Dumago v. Philippine Airlines, Inc.*, [G.R. No. 164856, January 20, 2009 (En Banc)], while respondent Philippine Airlines (PAL) was undergoing rehabilitation receivership, an illegal dismissal case was filed by petitioners against respondent PAL which was decided by the Labor Arbiter in their favor. On appeal, the NLRC reversed the ruling of the Labor Arbiter and held that their dismissal was valid. Resolving the issue of whether petitioners may collect their wages during the period between the Labor Arbiter’s order of reinstatement pending appeal and the NLRC decision overturning that of the Labor Arbiter, now that respondent PAL has terminated and exited from rehabilitation proceedings, the Supreme Court made the following observations on the *Genuino* doctrine:

Prior to *Genuino*, there had been no known similar case containing a dispositive portion where the employee was required to refund the salaries received on payroll reinstatement. In fact, in a catena of cases, the Court did not order the refund of salaries garnished or received by payroll-reinstated employees despite a subsequent reversal of the reinstatement order. The dearth of authority supporting *Genuino* is not difficult to fathom for it would otherwise render inutile the rationale of reinstatement pending appeal.

Even outside the theoretical trappings of the discussion and into the mundane realities of human experience, the “refund doctrine” easily demonstrates how a favorable decision by the Labor Arbiter could harm, more than help, a dismissed employee. The employee, to make both ends meet, would necessarily have to use up the salaries received during the pendency of the appeal, only to end up having to refund the sum in case of a final unfavorable decision. It is mirage of a stop-gap leading the employee to a risky cliff of insolvency.

Advisably, the sum is better left unspent. It becomes more logical and practical for the employee to refuse payroll reinstatement and simply find work elsewhere in the interim, if any is available. Notably, the option of payroll reinstatement belongs to the employer, even if the employee is able and raring to return to work. Prior to *Genuino*, it is unthinkable for one to refuse payroll reinstatement. In the face of the grim possibilities, the rise of concerned employees declining payroll reinstatement is on the horizon.

Further, the *Genuino* ruling not only disregards the social justice principles behind the rule, but also institutes a scheme unduly favorable to management. Under such scheme, the salaries dispensed *pendente lite* merely serve as a bond posted in installment by the employer. For in the event of a reversal of the Labor Arbiter’s decision ordering reinstatement, the employer gets back the same amount without having to spend ordinarily for bond premiums. This circumvents, if not directly contradicts, the proscription that the “posting of a bond [even a cash bond] by the employer shall not stay the execution for reinstatement.”

In playing down the stray posture in *Genuino* requiring the dismissed employee on payroll reinstatement to refund the salaries in case a final decision upholds the validity of the dismissal, the Court realigns the proper course of the prevailing doctrine on reinstatement pending appeal vis-à-vis the effect of a reversal on appeal.
Consequently, the Supreme Court reaffirmed the prevailing principle that even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court. It settles the view that the Labor Arbiter’s order of reinstatement is immediately executory and the employer has to either re-admit them to work under the same terms and conditions prevailing prior to their dismissal, or to reinstate them in the payroll, and that failing to exercise the options in the alternative, employer must pay the employee’s salaries.

The spirit of the rule on reinstatement pending appeal animates the proceedings once the Labor Arbiter issues the decision containing an order of reinstatement. The immediacy of its execution needs no further elaboration. Reinstatement pending appeal necessitates its immediate execution during the pendency of the appeal, if the law is to serve its noble purpose. At the same time, any attempt on the part of the employer to evade or delay its execution, as observed in Panuncillo and as what actually transpired in Kimberly Clark (Phils), Inc. v. Facundo, [G.R. No. 144885, July 26, 2006 (Unsigned Resolution)], Composite Enterprises, Inc. v. Caparoso, [G.R. No. 159919, August 8, 2007, 529 SCRA 470], Air Philippines [supra] and Roquero [supra], should not be countenanced.

After the Labor Arbiter’s decision is reversed by a higher tribunal, the employee may be barred from collecting the accrued wages, if it is shown that the delay in enforcing the reinstatement pending appeal was without fault on the part of the employer.

**Test under the Garcia doctrine.**

Under the said case of Garcia, the test to determine the liability of the employer (who did not reinstate the employee pending appeal) to pay the wages of the dismissed employee covering the period from the time he was ordered reinstated by the Labor Arbiter to the reversal of the Labor Arbiter’s decision by the High Court, is two-fold, to wit:

1. There must be actual delay or the fact that the order of reinstatement pending appeal was not executed prior to its reversal; and

2. The delay must not be due to the employer’s unjustified act or omission. If the delay is due to the employer’s unjustified refusal, the employer may still be required to pay the salaries notwithstanding the reversal of the Labor Arbiter’s decision.

In Genuino, there was no showing that the employer refused to reinstate the employee, who was the Treasury Sales Division Head, during the short span of four months or from the promulgation on May 2, 1994 of the Labor Arbiter’s Decision up to the promulgation on September 3, 1994 of the NLRC Decision. Notably, the former NLRC Rules of Procedure did not lay down a mechanism to promptly effectuate the self-executory order of reinstatement, making it difficult to establish that the employer actually refused to comply.

In a situation like that in International Container Terminal Services, Inc. v. NLRC, [360 Phil. 527 (1998)], where it was alleged that the employer was willing to comply with the order and that the employee opted not to pursue the execution of the order, the Court upheld the self-executory nature of the reinstatement order and ruled that the salary automatically accrued from notice of the Labor Arbiter's order of reinstatement until its ultimate reversal by the NLRC. It was later discovered that the employee indeed moved for the issuance of a writ but was not
acted upon by the Labor Arbiter. In that scenario where the delay was caused by the Labor Arbiter, it was ruled that the inaction of the Labor Arbiter who failed to act upon the employee’s motion for the issuance of a writ of execution may no longer adversely affect the cause of the dismissed employee in view of the self-executory nature of the order of reinstatement.

The new NLRC Rules of Procedure, which took effect on January 7, 2006, now require the employer to submit a report of compliance within 10 calendar days from receipt of the Labor Arbiter’s decision, disobedience to which clearly denotes a refusal to reinstate. The employee need not file a motion for the issuance of the writ of execution since the Labor Arbiter shall thereafter *motu proprio* issue the writ. With the new rules in place, there is hardly any difficulty in determining the employer’s intransigence in immediately complying with the order.

In the case at bar, petitioners exerted efforts to execute the Labor Arbiter’s order of reinstatement until they were able to secure a writ of execution, albeit issued on October 5, 2000 *after* the reversal by the NLRC of the Labor Arbiter’s decision. Technically, there was still actual delay which brings to the question of whether the delay was due to respondent’s unjustified act or omission.

It is apparent that there was inaction on the part of respondent to reinstate them, but whether such omission was justified depends on the onset of the exigency of corporate rehabilitation.

It is settled that upon appointment by the SEC of a rehabilitation receiver, all actions for claims before any court, tribunal or board against the corporation shall *ipso jure* be suspended. As stated early on, during the pendency of petitioners’ complaint before the Labor Arbiter, the SEC placed respondent under an Interim Rehabilitation Receiver. After the Labor Arbiter rendered his decision, the SEC replaced the Interim Rehabilitation Receiver with a Permanent Rehabilitation Receiver.

Case law recognizes that unless there is a restraining order, the implementation of the order of reinstatement is ministerial and mandatory. This injunction or suspension of claims by legislative fiat partakes of the nature of a restraining order that constitutes a legal justification for respondent’s non-compliance with the reinstatement order. Respondent’s failure to exercise the alternative options of actual reinstatement and payroll reinstatement was thus justified. Such being the case, respondent’s obligation to pay the salaries pending appeal, as the normal effect of the non-exercise of the options, did not attach.

While reinstatement pending appeal aims to avert the continuing threat or danger to the survival or even the life of the dismissed employee and his family, it does not contemplate the period when the employer-corporation itself is similarly in a *judicially monitored* state of being resuscitated in order to survive.

The parallelism between a judicial order of corporation rehabilitation as a justification for the non-exercise of its options, on the one hand, and a claim of actual and imminent substantial losses as ground for retrenchment, on the other hand, stops at the red line on the financial statements. Beyond the analogous condition of financial gloom, as discussed by Justice Leonardo Quisumbing in his Separate Opinion, are more salient distinctions. Unlike the ground of substantial losses contemplated in a retrenchment case, the state of corporate rehabilitation was judicially pre-determined by a competent court and not formulated for the first time in this case by respondent.
More importantly, there are legal effects arising from a judicial order placing a corporation under rehabilitation. Respondent was, during the period material to the case, effectively deprived of the alternative choices under Article 223 of the Labor Code, not only by virtue of the statutory injunction but also in view of the interim relinquishment of management control to give way to the full exercise of the powers of the rehabilitation receiver. Had there been no need to rehabilitate, respondent may have opted for actual physical reinstatement pending appeal to optimize the utilization of resources. Then again, though the management may think this wise, the rehabilitation receiver may decide otherwise, not to mention the subsistence of the injunction on claims.

In sum, the obligation to pay the employee’s salaries upon the employer’s failure to exercise the alternative options under Article 223 of the Labor Code is not a hard and fast rule, considering the inherent constraints of corporate rehabilitation.

• While writ of execution is not required in case reinstatement is ordered by the Labor Arbiter, it is necessary in case reinstatement is ordered by the NLRC on appeal.

While it is now well-settled that a writ of execution is not necessary to implement the reinstatement order issued by a Labor Arbiter upon a finding of illegality of dismissal since it is self-executory in accordance with Pioneer Texturizing [supra], however, if the reinstatement order is issued by the NLRC on appeal, there is a need to secure a writ of execution from the Labor Arbiter a quo to enforce the reinstatement of the employee.

This was the holding in the 2007 case of Mt. Carmel College v. Resuena, [G.R. No. 173076, October 10, 2007], where the Supreme Court clarified that Article 223 of the Labor Code providing that reinstatement is immediately executory even pending appeal applies only when it is the Labor Arbiter himself who ordered the reinstatement. When it is the NLRC on appeal or the Court of Appeals which affirmed the NLRC’s ruling, which orders the reinstatement, what applies is not Article 223 but Article 224 of the Labor Code. As contemplated under Article 224, the Secretary of Labor and Employment or any Regional Director, the Commission or any Labor Arbiter, or med-arbiter or voluntary arbitrator may, motu proprio or on motion of any interested party, issue a writ of execution on a judgment within five (5) years from the date it becomes final and executory. Consequently, under Rule III of the NLRC Manual on the Execution of Judgment, it is provided that if the execution be for the reinstatement of any person to a position, an office or an employment, such writ shall be served by the Sheriff upon the losing party or upon any other person required by law to obey the same, and such party or person may be punished for contempt if he disobeys such decision or order for reinstatement.

Earlier, the same ruling was made in Panuncillo v. CAP Philippines, Inc., [G.R. No. 161305, February 9, 2007], where the Labor Arbiter directed the reinstatement of the petitioner which was affirmed by the NLRC on appeal. Citing Roquero v. PAL [supra], petitioner argued that following the third paragraph of Article 223 of the Labor Code on reinstatement pending appeal, the order of the NLRC to reinstate her and to pay her wages was immediately executory even while the case was on appeal before the higher courts: The High Court, however, ruled that unlike the order for reinstatement issued by the Labor Arbiter which is self-executory, that of the NLRC is not. There is still a need for the issuance of a writ of execution. The reason is that under the sixth paragraph of Article 223, the NLRC decision becomes “final and executory after ten calendar days from receipt of the decision by the parties.” In view, however, of Article 224 of the Labor Code which requires the issuance of a writ of execution to execute the decisions, orders or awards of the NLRC, there is still a need for the issuance of a writ of execution of the NLRC
decision to implement its order of reinstatement. If a Labor Arbiter does not issue a writ of execution of the NLRC order for the reinstatement of an employee even if there is no restraining order, he could probably be merely observing judicial courtesy, which is advisable "if there is a strong probability that the issues before the higher court would be rendered moot and moribund as a result of the continuation of the proceedings in the lower court." In such a case, it is as if a temporary restraining order was issued. While under the sixth paragraph of Article 223 of the Labor Code, the decision of the NLRC becomes final and executory after the lapse of ten (10) calendar days from receipt thereof by the parties, the adverse party is not precluded from assailing it via a Petition for Certiorari under Rule 65 before the Court of Appeals and then to the Supreme Court via a Petition for Review under Rule 45. If during the pendency of the review, no order is issued by the courts enjoining the execution of a decision of the Labor Arbiter or NLRC which is favorable to an employee, the Labor Arbiter or the NLRC must exercise extreme prudence and observe judicial courtesy when the circumstances so warrant if one is to heed the injunction of the Court in *Philippine Geothermal, Inc v. NLRC*, [G.R. No. 106370, September 8, 1994, 236 SCRA 371, 378-379].

• Employment elsewhere does not affect reinstatement order and obligation to pay backwages.

   In the case of *Triad Security & Allied Services, Inc. v. Ortega*, [G.R. No. 160871, February 6, 2006], the petitioners claimed that they could not reinstate respondents as the latter had already found jobs elsewhere. In not giving credence to this contention, the High Court declared that respondents herein were minimum wage earners who were left with no choice after they were illegally dismissed from their employment but to seek new employment in order to earn a decent living. Surely, they could not be faulted for their perseverance in looking for, and eventually securing, new employment opportunities instead of remaining idle and awaiting the outcome of this case.

• Effect of failure of the illegally dismissed employee who was ordered reinstated to report back to work.

   The provision of Article 223 on reinstatement pending appeal is intended for the benefit of the employee and cannot be used to defeat his own interest. The law mandates the employer to either admit the dismissed employee back to work under the same terms and conditions prevailing prior to his dismissal or to reinstate him in the payroll to abate further loss of income on the part of the employee during the pendency of the appeal. But the language of the law should not be stretched as to give the employer the right to remove an employee who fails to immediately comply with the reinstatement order, especially when there is a reasonable explanation for his failure.

   Thus, in *Buenviaje v. CA*, [G.R. No. 147806, November 12, 2002], the Supreme Court observed that if the employer were really sincere in its offer to immediately reinstate petitioners to their former positions, it should have given them reasonable time to wind up their current preoccupation or at least to explain why they could not return to work at once. The employer did not do either. Instead, it gave them only five (5) days to report to their posts and when the petitioners failed to do so, it lost no time in serving them their individual notices of termination. The claim, therefore, of respondent company that petitioners have been validly dismissed is not impressed with merit.

• Reinstatement to a position lower in rank, not proper.
In *Panuncillo v. CAP Philippines, Inc.*, [G.R. No. 161305, February 9, 2007], the Supreme Court held that the Labor Arbiter’s order reinstating the petitioner to a lower position is a demotion which is not in accord with the third paragraph of Article 223 of the Labor Code.

**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*.

**APPEAL FROM LABOR ARBITER’S DECISIONS INVOLVING MONETARY AWARDS**

**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.

**May a Motion to Reduce Bond be validly 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.

*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 P1,427,802,04 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.

*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.

• **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.
UNFAIR LABOR PRACTICES

• 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.

• 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.

• What are the provisions of the Labor Code treating unfair labor practice acts?

Under the Labor Code, there are only five (5) provisions related to unfair labor practices, to wit:

1. Article 247 which describes the concept of unfair labor practices and prescribes the procedure for their prosecution;
2. Article 248 which enumerates the unfair labor practices that may be committed by employers;
3. Article 249 which enumerates the unfair labor practices that may be committed by labor organizations;
4. Article 261 which considers violations of the CBA as no longer unfair labor practices unless the same are gross in character which means flagrant and/or malicious refusal to comply with the economic provisions thereof.
5. Article 263 [c] which refers to union-busting involving the dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, where the existence of the union is threatened thereby.

• 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).

• What are the elements of ULP?

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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.

• 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.

(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. (DISCRIMINATION). 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. (UNION SECURITY CLAUSE). 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; (AGENCY FEE).

(f) To dismiss, discharge or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code (THIS IS THE ONLY GROUND WHICH MAY OR MAY NOT BE RELATED TO THE EMPLOYEE'S EXERCISE OF THE RIGHT TO SELF-ORGANIZE);

(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 THE VIOLATION IS "GROSS" IN CHARACTER, ACCORDING TO ARTICLE 261 OF THE LABOR CODE. GROSS VIOLATION OF THE CBA MEANS FLAGRANT AND/OR MALICIOUS REFUSAL TO COMPLY WITH THE ECONOMIC PROVISIONS OF THE CBA).

• **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.

• **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 VIOLATION IS "GROSS" IN CHARACTER, AS THIS TERM IS DEFINED IN ARTICLE 161 OF THE LABOR CODE).

• **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.

• **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.
• 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.

• 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.

• What are the types of union security clauses?  

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.

• 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 Malayan 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.

➢ **Requisites for termination based on union security clause?**

In the case of Alabang Country Club, Inc. vs. NLRC, [G.R. No. 170287, February 14, 2008], the Supreme Court declared that in terminating the employment of an employee by enforcing the union security clause, the employer needs only to determine and prove that:

1. The union security clause is applicable;
2. The union is requesting for the enforcement of the union security provision in the CBA; and
3. There is sufficient evidence to support the union’s decision to expel the employee from the union.

The foregoing requisites constitute just cause for terminating an employee based on the CBA’s union security provision.

➢ **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.

*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.

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.

• **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.

• **What is “featherbedding”?**

  a. **Anti-featherbedding provision of Article 249 [d].**

  Under Article 249 [d], it is an 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.

  This practice of the union is commonly known as “featherbedding” as it unduly and unnecessarily maintains or increases the number of employees used or the amount of time consumed to work on a specific job. This is done by the employees to unduly secure their jobs in the face of technological advances or as required by minimum health and safety standards, among other justifications. These featherbedding practices have been found to be wasteful and without legitimate justifications.

  b. **Payments for standby services.**

  A union commits an unfair labor practice under this provision by causing or attempting to cause an employer to pay or agree to pay for standby services. Payments for “standing-by,” or for the substantial equivalent of “standing-by,” are not payments for “services performed” within the meaning of the law. When an employer received a *bona-fide* offer of competent performance of relevant services, it remains for the employer, through free and fair negotiation, to determine whether such offer should be accepted and what compensation should be paid for the work done. *(NLRB v. Gamble Enterprises, Inc., 345 US 117 97 L Ed 864, 73 S Ct 560).*

  A union’s demand for a contract calling for payments for the presence of one of its members at a jobsite when no unionist’s work was being done therein, and when the employer indicated that it had no need for such labor, coupled with a strike to make the employer respond to such demand, is an exaction within the meaning of this law, and the demand is considered not a *bona-fide* offer of competent performance of relevant services. *(International Brotherhood of Teamsters, etc., 212 NLRB 968, 1974 CCH NLRB 26867, 87 BNA LRRM 1101).*
A union’s demand that a theater corporation employ maintenance men at its theater is also an arguable violation of the anti-featherbedding provision of the law where maintenance men employed at other theaters under union compulsion did little or no actual work, but were merely present on the premises during working hours. (Consolidated Theaters, Inc. v. Theatrical Stage Employees Union, 69 Cal 2d 713, 73 Cal Rptr 213, 447 P2d 325).

c. Payments for made work.

Where work is actually done by an employee with the employer’s consent, the union’s demand that the employee be compensated for time spent in doing the work does not violate the law. (NLRB v. Gamble Enterprises, Inc., 345 US 117, 97 L Ed 864, 73 S Ct 560; American Newspaper Publishers Association v. NLRB, 345 US 100, 97 L Ed 852, 73 S Ct 552, 31 ALR2d 497).

The law leaves to collective bargaining the determination of what, if any, work, including bona-fide “made work,” shall be included as compensable services and what rate of compensation shall be paid for it. (American Newspaper Publishers Association v. NLRB, 345 US 100, 97 L Ed 852, 73 S Ct 552, 31 ALR2d 497).

A musicians’ union has been held not to have violated the anti-featherbedding provision by refusing to permit a union band to perform at the opening game of the baseball season, refusing to permit a union organist to play at the home games, and picketing the baseball stadium, in order to force the owner of the baseball team to hire a union band to play at all weekend home games; or by refusing to consent to appearances of travelling bands in a theater unless the theater manager also employs a local orchestra in connection with certain programs where the local orchestra is to perform actual and not token services, even though the theater manager does not need or want to employ the local orchestra. (Musicians Union v. Superior Court of Alameda County, 69 Cal 2d 695, 73 Cal Rptr 201, 447 P2d 313; NLRB v. Gamble Enterprises, Inc., 345 US 117, 97 L Ed 864, 73 S Ct 560).

Similarly, a printers’ union does not violate the anti-featherbedding provision by securing payment of wages to printers from newspapers for setting “bogus” - duplicate forms for local advertisements although the newspaper already has cardboard matrices to be used as molds for metal casting from which to print the same advertisements – even though the “bogus” is ordinarily not used but is melted down immediately. (American Newspaper Publishers Association v. NLRB, 345 US 100, 97 L Ed 852, 73 S Ct 552, 31 ALR2d 497; International Hod Carriers Bldg. & Common Laborers Union, 135 NLRB 1153 1962 CCH NLRB 10938, 49 BNA LRRM 1638).

d. Payments for work already compensated.

The anti-featherbedding provision has been held not to bar a union from demanding payment for work for which the employer has already paid another person. Hence, a union has been held not guilty of an unfair labor practice in demanding payment to it of an amount equal to the wages paid by the employer to a non-union employee for work to which the union’s members were entitled. If the work is actually done by employees, there can be no conflict with the anti-featherbedding provision, regardless of whether or not the persons receiving payment are the ones who performed the work. (Rabouin v. NLRB [CA2] 195 F2d 906).

• 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).

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; Alhabrea 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).

**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 MISH and contracted two other agencies to provide security services for its premises. This resulted in the displacement of petitioners. As MISH 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 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.

In Cathay Pacific Steel Corp. v. Hon. CA, [G.R. No. 164561, August 30, 2006], the act of the employer in dismissing a supervisory employee (Personnel Superintendent) on account of his union activities related to the formation of the supervisory union was held as an unfair labor practice.

• When closure constitutes ULP.

In holding that petitioner is liable for unfair labor practice and illegal dismissal, the Supreme Court, in St. John Colleges, Inc. v. St. John Academy Faculty and Employees Union, [G.R. No. 167892, October 27, 2006], pronounced that the timing of, and the reasons for, the closure of the high school department and its reopening after only one year from the time it was closed down, show that the closure was done in bad faith for the purpose of circumventing the union’s right to collective bargaining and its members’ right to security of tenure. Petitioner SJCI undermined the Labor Code’s system of dispute resolution by closing down its high school department while the 1997 CBA negotiations deadlock issues were pending resolution before the Secretary of Labor and Employment. The closure was done in bad faith for the purpose of defeating the union’s right to collective bargaining. Besides, as found by the NLRC, the alleged illegality and excessiveness of the union’s demands were not sufficiently proved by SJCI. Even on the assumption that the union’s demands were illegal or excessive, SJCI’s remedy was to await the resolution by the DOLE Secretary and to file a ULP case against the union. However, SJCI did not have the power to take matters into its own hands by closing down its high school department in order to get rid of the union.

In the 2008 case of Purefoods Corp. v. Nagkakaisang Samahang Manggagawa ng Purefoods Rank-and-File, [G.R. No. 150896, August 28, 2008], the closure of petitioner’s Sto. Tomas farm was declared to have been made in bad faith. Badges of bad faith are evident from the following acts of the petitioner: it unjustifiably refused to recognize the Sto. Tomas Free
Workers Union’s (STFWU’s) and the other unions’ affiliation with Purefoods Unified Labor Organization (PULO); it concluded a new CBA with another union in another farm during the agreed indefinite suspension of the collective bargaining negotiations; it surreptitiously transferred and continued its business in a less hostile environment; and it suddenly terminated the STFWU members but retained and brought the non-members to its Malvar farm. Petitioner presented no evidence to support its contention that it was incurring losses or that the subject farm’s lease agreement was pre-terminated. Ineluctably, the closure of the Sto. Tomas farm circumvented the labor organization’s right to collective bargaining and violated the members’ right to security of tenure.

The sudden termination of the STFWU members is tainted with ULP because it was done to interfere with, restrain or coerce its employees in the exercise of their right to self-organization. Thus, the petitioner company is liable for the payment of moral and exemplary damages of P500,000.00 to the illegally dismissed STFWU members.

• When discontinuance of normal relations with the union having an intra-union dispute constitutes ULP.

  • De La Salle University v. De La Salle University Employees Association (DLSUEA-NAFTEU), [G.R. No. 177283, April 7, 2009]

Petitioners in this case were held liable for Unfair Labor Practice, and ordering them to pay respondent nominal damages in the amount of P250,000 and attorney’s fees in the amount of P50,000.

While an on-going intra-union dispute regarding election of union officers was on-going, some union members requested the University “to please put on escrow all union dues/agency fees and whatever money considerations deducted from salaries of concerned co-academic personnel until such time that an election of union officials has been scheduled and subsequent elections has been held.” (Underlining in the original; emphasis supplied)

Responding to said request, petitioners advised respondent by letter of August 16, 2001 as follows:

  x x x By virtue of the 19 March 2001 Decision and the 06 July 2001 Order of the Department of Labor and Employment (DOLE), the hold-over authority of your incumbent set of officers has been considered extinguished and an election of new union officers, to be conducted and supervised by the DOLE has been directed to be held. Until the result of this election comes out and a declaration by the DOLE of the validly elected officers is made, a void in the Union leadership exists.

In the light of these circumstances, the University has no other alternative but to temporarily do the following:

1. Establish a savings account for the Union where all collected union dues and agency fees will be deposited and held in trust; and
2. Discontinue normal relations with any group within the Union including the incumbent set of officers.
We are informing you of this decision of the University not only for your guidance but also for the apparent reason that the University does not want itself to be unnecessarily involved in your intra-union dispute. This is the only way that the University can maintain neutrality on this matter of grave concern.

Petitioners’ above-quoted move drew respondent to file a complaint against petitioners for Unfair Labor Practice (ULP complaint), claiming that petitioners unduly interfered with its internal affairs and discriminated against its members.

On the other matter raised by petitioners – that their acts of withholding union and agency dues and suspension of normal relations with respondent’s incumbent set of officers pending the intra-union dispute did not constitute interference, the Court finds for respondent.

Pending the final resolution of the intra-union dispute, respondent’s officers remained duly authorized to conduct union affairs. The clarification letter of May 16, 2003 issued by BLR Director Hans Leo J. Cacdac enlightens:

“We take this opportunity to clarify that there is no void in the DLSUEA leadership. The 19 March 2001 Decision of DOLE-NCR Regional Director should not be construed as an automatic termination of the incumbent officers’ tenure of office. As duly-elected officers of the DLSUEA, their leadership is not deemed terminated by the expiration of their terms of office, for they shall continue their functions and enjoy the rights and privileges pertaining to their respective positions in a hold-over capacity, until their successors shall have been elected and qualified.”

It bears noting that at the time petitioners’ questioned moves were adopted, a valid and existing CBA had been entered between the parties. It thus behooved petitioners to observe the terms and conditions thereof bearing on union dues and representation. It is axiomatic in labor relations that a CBA entered into by a legitimate labor organization and an employer becomes the law between the parties, compliance with which is mandated by express policy of the law.

CONSEQUENTLY, petitioners were held liable for Unfair Labor Practice, and ordering them to pay respondent nominal damages in the amount of P250,000 and attorney’s fees in the amount of P50,000.

• 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.

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.

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


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.

• **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.

### RIGHT TO SELF-ORGANIZATION IN THE PRIVATE SECTOR

• **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).*

• **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.
• 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.

• What are the three categories of employees?

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

• What are the three (3) types of managerial employees for purposes of labor relations?

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

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

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

• 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.

• 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.

• 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.
comprising the supervisory union. If not, said affiliation with one and the same federation is allowed.

This doctrine has been rendered nugatory with the amendment of Article 245 by R. A. No. 9481 which states: “THE RANK-AND-FILE UNION AND THE SUPERVISORS' UNION OPERATING WITHIN THE SAME ESTABLISHMENT MAY JOIN THE SAME FEDERATION OR NATIONAL UNION.” (See PART ONE of this Bar Review Guide for text of Article 245 as amended by R.A. No. 9481).

• What is the effect of mixed membership of supervisory and rank-and-file employees in one union?

Contrary to past rulings which declared that a union with mixed membership is no union at all, under the amending provision of R.A. No. 9481, such mixed membership will no longer affect the existence or legitimacy of the union. Thus, Article 245-A provides:


• 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

• What is a labor organization?

A labor organization (also known as union) 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.

• 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.

• 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 a legitimate workers’ association.

• 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.

• 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.

• What are the requirements of union registration under Article 134, as amended by R.A. No. 9481?

Article 234 now provides:

ART. 234. Requirements of Registration. – A federation, national union or industry or trade union center or an independent union shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements:

(a) Fifty pesos (P50.00) registration fee;

(b) The names of its officers, their addresses, the principal address of the labor organization, the minutes of the organizational meetings and the list of the workers who participated in such meetings;

(c) In case the applicant is an independent union, the names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate;

(d) If the applicant union has been in existence for one or more years, copies of its annual financial reports; and

(e) Four copies of the constitution and by-laws of the applicant union, minutes of its adoption or ratification, and the list of the members who participated in it.
• Labor organizations required to register.

Prior to its amendment by R. A. No. 9481, Article 234 makes a general reference to the organization that may register as a labor organization. It simply states: “[a]ny applicant labor organization, association or group of unions or workers.”

As worded now, Article 234 as amended by R. A. No. 9481, makes specific reference to the following organizations which may register as labor organizations, to wit:

1. Federation;
2. National Union;
3. Industry Union;
4. Trade Union Center;
5. Independent Union.

• Acquisition of legal personality as a legitimate labor organization.

Just like in the old provision, the legal personality of the unions mentioned in Article 234 is acquired upon the issuance of the certificate of registration. This should be distinguished from the acquisition of legal personality by a local chapter as provided for under Article 234-A (See text and discussion below).

• 20% membership requirement under Article 234 applies only to registration of an independent union; it does not apply to the registration of federation or national union.

As distinguished from the registration requirement of twenty percent (20%) membership applicable only to independent union, the following are the requirements for registration of a Federation or a National Union provided under a separate provision (Article 237) in the Labor Code:

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

(b) The names and addresses of the companies where the locals or chapters operate and the list of all the members in each company involved.” (See Article 237, Labor Code).

• Approval of registration of a labor organization, not ministerial in nature.

Previously, it was ordained that the approval of the registration of a labor organization is a ministerial function provided that the applicant labor organization complies with all the legal requirements for registration. (Vassar Industries Employees Union v. Estrella, G.R. No. L-46562, March 31, 1978, 82 SCRA 280).

However, it has been held lately that it is not the ministerial function of the Bureau of Labor Relations (BLR) to grant recognition to a labor organization after the necessary papers and documents for registration have been filed. It cannot be over-emphasized, according to the Supreme Court in S.S. Ventures International, Inc. v. S.S. Ventures Labor Union, [G.R. No. 161690, July 23, 2008], that the registration or the recognition of a labor union after it has
submitted the corresponding papers is not ministerial on the part of the BLR. Far from it. After a labor organization has filed the necessary registration documents, it becomes mandatory for the BLR to check if the requirements under Article 234 of the Labor Code have been sedulously complied with. If the union’s application is infected by falsification and serious irregularities, especially those appearing on the face of the application and its attachments, a union should be denied recognition as a legitimate labor organization. The issuance to a union of a certificate of registration necessarily implies that its application for registration and the supporting documents thereof are prima facie free from any vitiating irregularities.

Needlessly, after a certificate of recognition has been issued, the propriety of the labor organization’s registration could be assailed directly through cancellation of registration proceedings in accordance with Articles 238 and 239 of the Labor Code, or indirectly by challenging its petition for the issuance of an order for certification election.

CHARTERING AND AFFILIATION

**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.

**What is an affiliate?**

“Affiliate” refers to:

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

**What is a local chapter?**

“Local Chapter” (formerly known as “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.

**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.

**Are local chapters 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.
• How is a local chapter created through chartering by a federation or national union?

Under Article 234-A of the Labor Code, as inserted as a new provision thereof by R. A. No. 9481 [June 14, 2008], it is provided, thus:

“ART. 234-A. Chartering and Creation of a Local Chapter. - A duly registered federation or national union may directly create a local chapter by issuing a charter certificate indicating the establishment of the local chapter. The chapter shall acquire legal personality only for purposes of filing a petition for certification election from the date it was issued a charter certificate.

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

(a) The names of the chapter’s officers, their addresses, and the principal office of the chapter; and

(b) The chapter’s constitution and by-laws: Provided, That where the chapter’s constitution and by-laws are the same as that of the federation or the national union, this fact shall be indicated accordingly.

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

• Meaning of Trade Union Center.

A “Trade Union Center” is any group of registered national unions or federations organized for the mutual aid and protection of its members; for assisting such members in collective bargaining; or for participating in the formulation of social and employment policies, standards, and programs, and is duly registered with the Department of Labor and Employment in accordance with Rule III, Section 2 of the Implementing Rules. (Section 1(p), Rule I, Book V, of the Implementing Rules, as amended by Department Order No. 9; San Miguel Corp. Employees Union-PTGWQ vs. San Miguel Packaging Products Employees Union – PDMP, G.R. No. 171153, Sept. 12, 2007).

• Only a Federation or a National Union May Directly Create a Local Chapter.

Under Article 234-A, it is clear that the authority to directly create a local chapter is vested only with a duly registered federation or national union which is empowered to issue a charter certificate indicating the establishment of the local chapter. No other entities are granted the same authority under this provision.

• A Trade Union Center is not Allowed to Charter Directly.
Article 234, as amended by R. A. No. 9481, now includes the term *Trade Union Center*, but interestingly, the provision indicating the procedure for chartering or creating a local or chapter laid down in Article 234-A, still makes no mention of a “trade union center.”

Thus, applying the Latin maxim *expressio unius est exclusio alterius*, it was held in the 2007 case of *San Miguel Corp. Employees Union-PTGWO vs. San Miguel Packaging Products Employees Union – PDMP*, [G.R. No. 171153, Sept. 12, 2007], that trade union centers [like the *Pambansang Diwa ng Manggagawang Pilipino (PDMP)*] are not allowed to charter directly a local or a chapter.

**Acquisition of legal personality by the various unions, distinguished.**

In the light of the amendatory provisions introduced by R. A. No. 9481, there is now a distinction between the acquisition of legal personality by a federation, national union, industry union and independent union under Article 234, on the one hand, and the acquisition of legal personality of a local chapter created by means of chartering by a federation or national union under Article 234-A, on the other.

1. **Acquisition of legal personality under Article 234.**

   According to Article 234, as amended by R. A. No. 9481, the issuance of a certificate of registration to a federation, national union, industry union or independent union, marks its acquisition of legal personality.

2. **Acquisition of legal personality under Article 234-A (See text above).**

   The same thing may not be said of a local chapter. Following Article 234-A, as inserted into the Labor Code by R. A. No. 9481, a local chapter directly created by a federation or national union acquires legal personality in two (2) stages, namely:

   **First stage.** Only partial legal personality is acquired by a local chapter upon the issuance to it of a charter certificate by a federation or national union. It is partial in the sense that the legal personality so acquired is only meant for one purpose, that is, to file a petition for certification election. At this stage, the local chapter is not yet in full possession of all the rights and privileges accorded by law to a legitimate labor organization.

   **Second stage.** Full legal personality is accorded to a local chapter only upon compliance with the all-too-important requirement of submission of its charter certificate and the documents required under Article 234-A to the Department of Labor and Employment. In fact, it is the very act of submission of the said documentary requirements that marks the grant of full legitimate status to a local chapter which would entitle it to all the rights and privileges of a legitimate labor organization. No certificate of registration is required to be issued to a local chapter before it can acquire full legal personality.

   Obviously, the requirements on union registration contemplated under Article 234-A are far less stringent than those provided under Article 234. As observed by the Supreme Court in the 1996 case of *San Miguel Foods, Inc.-Cebu B-Meg Feed Plant v. Laguesma*, [G.R. No. 116172, October 10, 1996, 263 SCRA 68, 76], ordinarily, a labor organization or a workers’ association should comply with the requirements prescribed under Articles 234 and 235 of the Labor Code. However, the procedure laid down in said provisions is not the only way by which a labor union
may become legitimate. When an unregistered union becomes a branch, local or chapter (now called “local chapter”) of a federation or national union, some of the requirements thereunder are no longer required. (See also Progressive Development Corporation v. Secretary, Department of Labor and Employment, G.R. No. 96425, Feb. 4, 1992, 205 SCRA 802, 810).

The fact that even during the pendency of the application for registration, a union can already initiate a petition for certification election was underscored too clearly as early as the case of U. E. Automotive Employees v. Noriel, [G.R. No. L-44350, November 25, 1976, 74 SCRA 72] where it was already ruled that a union’s right to file said petition is guaranteed, even pending the registration process, for as long as no fatal defect exists in its application for registration.

• What is the proof of affiliation with a federation?

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

1. Local chapter. - Charter Certificate issued by the federation or national union.
2. Independently-registered union. - Contract of Affiliation between federation and the union.

• 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 agent and the local union, the principal.

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.

• 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.

• 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 unillumined 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.
• **Disaffiliation of independently-registered union and local chapter, 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 (Local Chapter).

Once a Local Chapter 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).*

• **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.

• **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.

• **What is meant by “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 (now “local chapter”) 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).

• What are the ground for cancellation of union registration?

As amended by R. A. No. 9481, the grounds are now limited to three, thus:

“ART. 239. Grounds for Cancellation of Union Registration. - The following may constitute grounds for cancellation of union registration:

(a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification;

(b) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters;

(c) Voluntary dissolution by the members.”

• Can the union voluntarily cancel its own registration?

Yes, because of the following amendatory provision introduced by R. A. No. 9481:

“ART. 239-A. Voluntary Cancellation of Registration. - The registration of a legitimate labor organization may be cancelled by the organization itself. Provided, That at least two-thirds of its general membership votes, in a meeting duly called for that purpose to dissolve the organization: Provided, further, That an application to cancel registration is thereafter submitted by the board of the organization, attested to by the president thereof.”

• 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, 1997).*

Under Article 238-A of the Labor Code, as amended by R. A. No. 9481 [June 14, 2007], it is provided as follows:

**ART. 238-A. Effect of a Petition for Cancellation of Registration.** - A petition for cancellation of union registration shall not suspend the proceedings for certification election nor shall it prevent the filing of a petition for certification election.

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

• **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).*

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

No. This is because of the amendment introduced by R. A. No. 9481 which states:

**“ART. 242-A. Reportorial Requirements.** - The following are documents required to be submitted to the Bureau by the legitimate labor organization concerned:

(a) Its constitution and by-laws, or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification of the constitution and by-laws within thirty (30)
days from adoption or ratification of the constitution and by-laws or amendments thereto;

(b) Its list of officers, minutes of the election of officers, and list of voters within thirty (30) days from election;

(c) Its annual financial report within thirty (30) days after the close of every fiscal year; and

(d) Its list of members at least once a year or whenever required by the Bureau.

“FAILURE TO COMPLY WITH THE ABOVE REQUIREMENTS SHALL NOT BE A GROUND FOR CANCELLATION OF UNION REGISTRATION BUT SHALL SUBJECT THE ERRING OFFICERS OR MEMBERS TO SUSPENSION, EXPULSION FROM MEMBERSHIP, OR ANY APPROPRIATE PENALTY.”

CERTIFICATION ELECTION & REPRESENTATION ISSUES

• 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.

• 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

• 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 contesting 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.

• What is the distinction between consent election and certification election?

A consent election is one mutually agreed upon by the parties, with or without the intervention by the DOLE, its purpose being merely to determine the issue of majority representation of all the workers in an appropriate collective bargaining unit; while a certification election is one which is ordered by the DOLE and is aimed at determining the sole and exclusive bargaining agent of all the employees in an appropriate bargaining unit for the purpose of collective bargaining. From the very nature of consent election, it is a separate and distinct process and has nothing to do with the import and effect of a certification election.

By law, as a result of the consent election, the right to be the exclusive representative of all the employees in an appropriate collective bargaining unit is vested in the labor union “designated or selected” for such purpose “by the majority of the employees” in the unit concerned.

• Is direct certification allowed?

Direct certification of union is not allowed.

• 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.

• 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.

SUBSTANTIAL MUTUAL INTERESTS RULE:

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

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 fragmentatious 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.

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 St. James School of Quezon City vs. Samahang Manggagawa sa St. James School of Quezon City, [G.R. No. 151326, Nov. 23, 2005], respondent union sought to represent the rank-and-file employees (consisting of the motor pool, construction and transportation employees) of petitioner-school’s Tandang Sora campus. Petitioner-school opposed it by contending that the bargaining unit should not only be composed of said employees but must include administrative, and office personnel in its five (5) campuses. The Supreme Court disagreed with said contention. The motor pool, construction and transportation employees of the Tandang Sora
campus had 149 qualified voters at the time of the certification election, hence, it was ruled that the 149 qualified voters should be used to determine the existence of a quorum during the election. Since a majority or 84 out of the 149 qualified voters cast their votes, a quorum existed during the certification election. The computation of the quorum should be based on the rank-and-file motor pool, construction and transportation employees of the Tandang Sora campus and not on all the employees in St. James’ five (5) campuses. Moreover, the administrative, teaching and office personnel are not members of the union. They do not belong to the bargaining unit that the union seeks to represent.

GLOBE DOCTRINE:

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 vs. 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.

COLLECTIVE BARGAINING HISTORY:

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.
EMPLOYMENT STATUS DOCTRINE:

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 supermarts 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 supermarts 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 supermarts 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).

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).

**May excluded employees be included in the bargaining unit under a 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 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.

**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.

**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.

**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.
• Who may file a 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.

ROLE OF EMPLOYER IN CERTIFICATION ELECTION CASES:

R. A. No. 9481 [June 14, 2007] amended the Labor Code by introducing the following provisions:

“Article 258-A. Employer as Bystander. - In all cases, whether the petition for certification election is filed by an employer or a legitimate labor organization, the employer shall not be considered a party thereto with a concomitant right to oppose a petition for certification election. The employer’s participation in such proceedings shall be limited to:

(1) being notified or informed of petitions of such nature; and

(2) submitting the list of employees during the pre-election conference should the Med-Arbiter act favorably on the petition.”

• Can a federation or national union file a petition for certification election for and on behalf of its local chapter? If yes, is it obligated to disclose the names of the officers and members of the local chapter?

Yes, a federation or national union can file such petition in both organized and unorganized establishments and it is not required to make such disclosure. The following amendatory provisions introduced by R. A. No. 9481 are relevant:

“ART. 256. Representation Issue in Organized Establishments. - In organized establishments, when a verified petition questioning the majority status of the incumbent bargaining agent is filed by any legitimate labor organization including a national union or federation which has already issued a charter certificate to its local chapter participating in the certification election or a local chapter which has been issued a charter certificate by the national union or federation before the Department of Labor and Employment within the sixty (60)-day period before the expiration of the collective bargaining agreement, the Med-Arbiter shall automatically order an election by secret ballot when the verified petition is supported by the written consent of at least twenty-five percent (25%) of all the employees in the bargaining unit to ascertain the will of the employees in the appropriate bargaining unit. To have a valid election, at least a majority of all eligible voters in the unit must have cast their votes. The labor union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining
agent of all the workers in the unit. When an election which provides for three or more choices results in no choice receiving a majority of the valid votes cast, a RUN-OFF ELECTION shall be conducted between the labor unions receiving the two highest number of votes: Provided, That the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast. IN CASES WHERE THE PETITION WAS FILED BY A NATIONAL UNION OR FEDERATION, IT SHALL NOT BE REQUIRED TO DISCLOSE THE NAMES OF THE LOCAL CHAPTER’S OFFICERS AND MEMBERS.

“At the expiration of the freedom period, the employer shall continue to recognize the majority status of the incumbent bargaining agent where no petition for certification election is filed.”

“ART. 257. Petitions in Unorganized Establishments. - In any establishment where there is no certified bargaining agent, a certification election shall automatically be conducted by the Med-Arbiter upon the filing of a petition by any legitimate labor organization, including a national union or federation which has already issued a charter certificate to its local/chapter participating in the certification election or a local/chapter which has been issued a charter certificate by the national union or federation. IN CASES WHERE THE PETITION WAS FILED BY A NATIONAL UNION OR FEDERATION, IT SHALL NOT BE REQUIRED TO DISCLOSE THE NAMES OF THE LOCAL CHAPTER’S OFFICERS AND MEMBERS.”

• 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.

• 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

• 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.

• 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.”

**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:

**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)

• What is a Collective Bargaining Agreement (CBA)?

A 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.

• What are the legal principles applicable to 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.

• 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]).

• 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

• 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]).

• 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
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.).

• 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.

• 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.

• 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]*).

• **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 to 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.

• **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*).

• **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.

• **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.

• **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.

• 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.

• 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.

• 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

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).

• 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.

• 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 suspending 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.”.

**What is meant by “retroactivity” of CBA?**

- **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.

- **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**

**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**

*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.

*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.

*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.

*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]).

**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.

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).

**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**

**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.

**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.

**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.
a. Right to picket is protected by the constitution and the law.

The right to picket is part of the right guaranteed under the law “to engage in concerted activities for purposes of collective bargaining for their mutual benefit and protection.” (Malayang Manggagawa sa Esso v. Esso Standard Eastern, Inc., G.R. No. L-24224, July 30, 1965, 14 SCRA 801).

This right is also duly guaranteed under the freedom of speech principle in the Constitution. (De Leon v. National Labor Union, G.R. No. L-7586, Jan. 30, 1957, 100 Phil. 789; The Insular Life Assurance Co., Ltd. Employees Association - NATU v. The Insular Life Assurance Co., Ltd., G.R. No. L-25291, Jan. 30, 1971, 37 SCRA 244).

b. Effect of absence of employment relationship on picketing.


c. Limitations on the right to picket.

It is important to stress that the right to peaceful picketing should be exercised by the workers with due respect for the rights of others. Hence, commission by any picketing employee of any act of violence, coercion or intimidation is prohibited. Similarly, stationary picket and the use of means like placing of objects to constitute permanent blockade or to effectively close points of entry or exit in company premises are likewise not allowed by law. (Section 11, Rule XIII, Book V, Rules to Implement the Labor Code; No. 16, Guidelines Governing Labor Relations).

The strikers staging the picket cannot also rightfully prevent employees of another company which is not their employer, from getting in and out of its rented premises since this will violate the right of innocent bystanders. (Liwayway Publications, Inc. v. Permanent Concrete Workers Union, G.R. No. L-25003, Oct. 23, 1981).

d. Effect of the use of foul language during the conduct of the picket.

In the event the picketers employ discourteous and impolite language in their picket, such may not result in, or give rise to, libel or action for damages. (Philippine Commercial and Industrial Bank v. Philnabank Employees Association, G.R. No. L-29630, July 2, 1981, 105 SCRA 315).

e. When picket becomes a strike.

In distinguishing between a picket and a strike, the totality of the circumstances obtaining in a case should be taken into account. For instance, petitioners in Santa Rosa Coca-Cola Plant Employees Union v. Coca-Cola Bottlers Phils., Inc., [G.R. Nos. 164302-03, January 24, 2007], contend that what they conducted was a mere picketing and not a strike. In disagreeing to this contention, the High Court emphasized that it is not an issue in this case that there was a labor dispute between the parties as petitioners had notified the respondent of their intention to stage a strike, and not merely to picket. Petitioners’ insistence to stage a strike is evident in the fact that an amended notice of strike was filed even as respondent moved to dismiss the first notice. The
basic elements of a strike are present in this case: 106 members of petitioner Union, whose respective applications for leave of absence on September 21, 1999 were disapproved, opted not to report for work on said date, and gathered in front of the company premises to hold a mass protest action. Petitioners deliberately absented themselves and instead wore red ribbons and carried placards with slogans such as: “YES KAMI SA STRIKE,” “PROTESTA KAMI,” “SAHOD, KARAPATAN NG MANGGAGAWA IPAGLABAN,” “CBA-’WAG BABOYIN,” “STOP UNION BUSTING.” They marched to and fro in front of the company’s premises during working hours. Thus, petitioners engaged in a concerted activity which already affected the company’s operations. The mass concerted activity obviously constitutes a strike. Moreover, the bare fact that petitioners were given a Mayor’s permit is not conclusive evidence that their action/activity did not amount to a strike. The Mayor’s description of what activities petitioners were allowed to conduct is inconsequential. To repeat, what is definitive of whether the action staged by petitioners is a strike and not merely a picket is the totality of the circumstances surrounding the situation.

• 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.

• What are the various forms of strikes?

A strike may be classified:

1. As to nature:
   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, it is 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. Unfair labor practice (ULP) or political strike - one called to protest against the employer’s unfair labor practices enumerated in Article 248 of the Labor Code, including gross violation of the CBA under Article 261, and union-busting under Article 263 [c] of the Labor Code.
   e. Slowdown strike - one staged without the workers quitting their work but by merely slackening or reducing their normal work output.
   f. Wildcat strike - one declared and staged without the majority approval of the recognized bargaining agent. Wildcat strike is deemed to aggravate the illegality of concerted actions for the purpose of applying the proper penalty to those responsible for illegal work stoppages. It includes concerted actions staged by a group of
employees or union officers without the sanction or authorization of the union or in violation of the union’s constitution and by-laws.

g. Sit-down strike - one where the workers stop working but do not leave their place of work.

2. **As to coverage:**

a. “General strike” – one which covers and extends over a whole province or country. In this kind of strike, the employees of various companies and industries cease to work in sympathy with striking workers of another company. It is also resorted to for the purpose of putting pressure on the government to enact certain labor-related measures such as mandated wage increases or to cease from implementing a law which workers consider inimical to their interest. It is also mounted for purposes of paralyzing or crippling the entire economic dispensation.

b. “Particular strike” – one which covers a particular establishment or employer or one industry involving one union or federation.

3. **As to purpose:**

a. “Economic strike” [supra].

b. “Unfair labor practice strike” or “political strike” [supra].

4. **As to the nature of the strikers’ action:**

a. “Partial strike” – one which consists of unannounced work stoppages such as slowdowns, walkouts or unauthorized extension of rest periods.

b. “Sit-down strike” [supra].

c. “Slowdown strike” [supra].

5. **As to the extent of the interest of strikers:**

a. “Primary strike” – refers to a strike conducted by the workers against their employer, involving a labor dispute directly affecting them.

b. “Secondary strike” - refers to a strike staged by the workers of an employer involving an issue which does not directly concern or affect their relationship but rather, by some circumstances affecting the workers such as when the employer persists to deal with a third person against whom the workers have an existing grievance. Workers stage this kind of strike to secure the economic assistance of their employer to force the third person to yield to the union on the issues involving it and said third person.

c. “Sympathy strike” - refers to a strike where the strikers have no demands or grievances or labor dispute of their own against their employer but nonetheless stage the strike for the purpose of aiding, directly or indirectly, other strikers in other establishments or companies, without necessarily having any direct relation to the advancement of the strikers’ interest. This is patently an illegal strike.

An example of a sympathy strike is the “welga ng bayan” where workers refuse to render work to join a general strike which does not involve a labor or industrial dispute.
between the strikers and the employer struck against but it is staged in pursuit of certain ends such as reduction in the electric power rates, increase in the legislated wages, etc.

**Overtime Boycott.** 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.”

**Closely Cropped Hair or Cleanly Shaven Head.** The sporting by the workers of closely cropped hair or cleanly shaven heads after their union filed a notice of strike as a result of a CBA deadlock was considered a form of illegal strike in the 2008 case of *National Union of Workers in the Hotel, Restaurant and Allied Industries [NUWHRAIN-APL-IUF] Dusit Hotel Nikko Chapter v. The Honorable CA*, [G.R. Nos. 163942 and 166295, November 11, 2008]. The union’s violation of the Hotel’s Grooming Standards was clearly a deliberate and concerted action to undermine the authority of and to embarrass the Hotel and was, therefore, not a protected action. In view of the union’s collaborative effort to violate the Hotel’s Grooming Standards, it succeeded in forcing the Hotel to choose between allowing its inappropriately hair-styled employees to continue working, to the detriment of its reputation, or to refuse them work, even if it had to cease operations in affected departments or service units, which in either way would disrupt the operations of the Hotel. The act of the union was not merely an expression of their grievance or displeasure but, indeed, a calibrated and calculated act designed to inflict serious damage to the Hotel’s finances or its reputation. Thus, it was held in this case that the union’s concerted violation of the Hotel’s Grooming Standards which resulted in the temporary cessation and disruption of the Hotel’s operations is an unprotected act and should be considered as an illegal strike.

It is axiomatic, therefore, that the fact that the conventional term “strike” was not used by the striking employees to describe their common course of action is inconsequential since the substance of the situation, and not its appearance, is deemed controlling.

**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.

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.

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.

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

7. **Issues involving legislated wage orders such as wage distortion.**

   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.

• **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.

• 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 aforesaid 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.

• **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.

• **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).

**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).

**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.

**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.

**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.

DECLARING PROTEST RALLIES IN FRONT OF GOVERNMENT OFFICES.

In Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc., [G.R. No. L-31195, June 5, 1973, 51 SCRA 189], a mass action staged in Malacañang to petition the Chief Executive against the abusive behavior of some police officers was considered a proper exercise of the employees’ right to speak out and to peaceably gather and ask government for redress of their grievances.

Finding solace in the above doctrine in Philippine Blooming Mills, the petitioner union in Toyota Motor Phils. Corp. Workers Association [TMPCWA] v. NLRC, [G.R. Nos. 158786 & 158789, October 19, 2007], which staged protest rallies from February 21 to 23, 2001 in front of the offices of the Bureau of Labor Relations (BLR) and the DOLE Secretary, contends that said protest rallies are not within the ambit of strikes as defined in the Labor Code, since they were legitimate exercise of their right to peaceably assemble and petition the government for redress of grievances. It argues that the protest was not directed at Toyota but against the government (DOLE and BLR). The Supreme Court, however, was unconvincing. In holding that the February 21 to 23, 2001 concerted activities were not protest actions but actually strikes which are illegal for having been undertaken without satisfying the mandatory pre-requisites for a valid strike under Article 263 of the Labor Code, the High Court reasoned, thus:

“While the facts in Philippine Blooming Mills Employees Organization are similar in some respects to that of the present case, the Union fails to realize one major difference: there was no labor dispute in Philippine Blooming Mills Employees Organization. In the present case, there was an on-going labor dispute arising from Toyota’s refusal to recognize and negotiate with the Union,
which was the subject of the notice of strike filed by the Union on January 16, 2001. Thus, the Union’s reliance on *Philippine Blooming Mills Employees Organization* is misplaced, as it cannot be considered a precedent to the case at bar.

xxx

“Applying pertinent legal provisions and jurisprudence, we rule that the protest actions undertaken by the Union officials and members on February 21 to 23, 2001 are not valid and proper exercises of their right to assemble and ask government for redress of their complaints, but are illegal strikes in breach of the Labor Code. The Union’s position is weakened by the lack of permit from the City of Manila to hold ‘rallies.’ Shrouded as demonstrations, they were in reality temporary stoppages of work perpetrated through the concerted action of the employees who deliberately failed to report for work on the convenient excuse that they will hold a rally at the BLR and DOLE offices in Intramuros, Manila, on February 21 to 23, 2001. The purported reason for these protest actions was to safeguard their rights against any abuse which the med-arbiter may commit against their cause. However, the Union failed to advance convincing proof that the med-arbiter was biased against them. The acts of the med-arbiter in the performance of his duties are presumed regular. Sans ample evidence to the contrary, the Union was unable to justify the February 2001 mass actions. What comes to the fore is that the decision not to work for two days was designed and calculated to cripple the manufacturing arm of Toyota. It becomes obvious that the real and ultimate goal of the Union is to coerce Toyota to finally acknowledge the Union as the sole bargaining agent of the company. This is not a legal and valid exercise of the right of assembly and to demand redress of grievance.

DECLARING WELGA NG BAYAN.

Stoppage of work due to *welga ng bayan* is in the nature of a general strike as well as an extended sympathy strike. It affects numerous employers including those who do not have a dispute with their employees regarding the terms and conditions of employment.

Employees who have no labor dispute with their employer but who, on a day they are scheduled to work, refuse to work and instead join a *welga ng bayan* commit an illegal work stoppage.

Thus, as pronounced in *Biflex Phils. Inc. Labor Union [NAFLU] v. Fileflex Industrial and Manufacturing Corp.*, [G.R. No. 155679, December 19, 2006], even if petitioners’ joining the *welga ng bayan* were considered merely as an exercise of their freedom of expression, freedom of assembly or freedom to petition the government for redress of grievances, the exercise of such rights is not absolute. For the protection of other significant State interests such as the “right of enterprises to reasonable returns on investments, and to expansion and growth” enshrined in the 1987 Constitution must also be considered, otherwise, oppression or self-destruction of capital in order to promote the interests of labor would be sanctioned. And it would give imprimatur to workers’ joining demonstrations/rallies even before affording the employer an opportunity to make the necessary arrangements to counteract the implications of the work stoppage on the business, and ignore the novel “principle of shared responsibility between workers and employers” aimed at fostering industrial peace. There being no showing that
petitioners notified respondents of their intention or that they were allowed by respondents to join the 
welga ng bayan on October 24, 1990, their work stoppage is beyond legal protection.

• 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.

• 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.

ASSUMPTION OF JURISDICTION OVER NATIONAL INTEREST DISPUTES OR CERTIFICATION THEREOF TO THE NLRC FOR COMPULSORY ARBITRATION.

• 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).

• Pre-requisites prior to assumption or certification.

DOLE Secretary Marianito Roque issued on March 29, 2010, DOLE Department Order No. 40-G-03, Series of 2010 which inserted a new Section 15 in Rule XXII of the Rules to Implement the Labor Code. This new section imposes as a pre-requisite to the assumption of jurisdiction by the DOLE Secretary or the certification of the labor dispute to the NLRC for compulsory arbitration compliance with any of the following conditions:

1. Both parties requested the Secretary of Labor and Employment to assume jurisdiction over the labor dispute; or
2. After a conference is called by the Office of the Secretary of Labor and Employment on the propriety of its issuance, motu proprio or upon a request or petition by either of the parties to the labor dispute.

Such assumption shall have the effect of automatically enjoining an impending strike or lockout. If a strike/lockout has already taken place at the time of assumption, all striking or locked out employees and other employees subject of the notice of strike shall immediately return...
to work and the employer shall immediately resume operations and readmit all employees under the same terms and conditions prevailing before the strike or lockout.

Notwithstanding the foregoing, parties to the case may agree at any time to submit the dispute to the Secretary of Labor or his duly authorized representative as Voluntary Arbitrator or to a duly accredited Voluntary Arbitrator or to a panel of Voluntary Arbitrators.

To stress, this injunctive effect is automatic. *(National Federation of Labor v. NLRC, 139 SCRA 589).*

Article 264 [a] of the Labor Code categorically prohibits the staging of a strike or lockout after said assumption or certification.

The DOLE Secretary or the NLRC, as the case may be, may seek the assistance of law enforcement agencies to ensure compliance with the assumption or certification order as well as with such orders which may forthwith be issued to enforce the same. *(Article 263 [g], Labor Code).*

### What is the effect of such assumption or certification of labor dispute to the NLRC?

- **On intended or impending strike or lockout** - automatically enjoined even if a Motion for Reconsideration is filed.
- **On actual strike or lockout** - strikers or locked out employees should immediately return to work and employer should readmit them back.
- **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-Confessor, (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.”

**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)*.

**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. \((\text{Caltex vs. Lucero, 4 SCRA 1196})\).

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

In the 2003 case of \(\text{San Miguel Corporation vs. NLRC, [G. R. No. 119293, June 10, 2003]}\), 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. \((\text{See also PAL vs. Drilon, 193 SCRA 223 [1991]})\).

In the earlier case of \(\text{San Miguel Corporation vs. NLRC, [304 SCRA 1(1999)]}\) 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 \(\text{IBM vs. NLRC, [198 SCRA 586 (1991)]}\), 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 \(\text{Bulletin Publishing vs. Sanchez, [G. R. No. 74425, Oct. 7, 1986]}\), 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.

• \textit{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 \textit{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, \textit{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. \((\text{Telefunken Semiconductors Employees Union-FFW vs. CA, G. R. Nos. 143013-14, Dec. 18, 2000})\).
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]).

• 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.”
• **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.

• **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.

• 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 Conception, 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.

**• When is “payroll reinstatement” pursuant to a return-to-work order 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.

**• 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]).

• 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).

• 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 [GLOWRAIN]; 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.


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 2006 case of *University of San Agustin Employees’ Union-FFW v. The CA,* [G.R. No. 169632, March 28, 2006], presents a good study on this point. Per Sheriff’s Report, the assumption of jurisdiction order (AJO) was served at 8:45 a.m. of September 19, 2003. The Sheriff tried to serve it upon the union lawyer, Atty. Mae Lacerna, a former DOLE Regional Director. Atty. Lacerna, however, refused to be officially served the Order pointing to Board Resolution No. 3 passed by the union officers that only the union president has the authority to receive said order. Atty. Lacerna then informed the Sheriff that the union president will accept the order at around 5:00 o’clock in the afternoon. Atty. Lacerna told the Sheriff that only when the union president receives the order at 5:00 p.m. shall the union recognize the Secretary of Labor and Employment as having assumed jurisdiction over the labor dispute. Based on these facts, the Supreme Court ruled that the day-long strike staged on that day, September 19, 2003, was illegal. The strikers then should have returned to work immediately. However, they persisted with their refusal to receive the AJO and waited for their union president to receive the same at 5:25 p.m. As a consequence of this refusal to acknowledge receipt of the AJO, the union officers were deemed to have lost their employment status for having knowingly participated in said illegal act.

The 2000 case of *Telefunken Semiconductors Employees Union-FFW vs. CA,* [G. R. Nos. 143013-14, December 18, 2000], also 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.

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.

In University of San Agustin Employees’ Union-FFW v. The CA, [G.R. No. 169632, March 28, 2006], the defiance of the assumption of jurisdiction order (AJO) lasted only within the same day it was served. The AJO was served by the Sheriff at 8:45 a.m. of September 19, 2003 but receipt thereof was refused by the union. It was officially received by the union president only at 5:25 p.m. of the same day. Yet, it was declared that the strike conducted on that day in defiance of said order was illegal.

**h. 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.

• **No practice of giving 24 hours to strikers within which to return to work.**

In the same case of University of San Agustin [supra], the union’s assertion of a well settled practice that the Secretary of Labor and Employment always gives twenty-four hours (24) to the striking workers within which to return to work was held to offer no refuge to the union. Aside from the fact that this alleged well settled practice has no basis in law and jurisprudence, Article 263 [g] of the Labor Code is explicit that if a strike has already taken place at the time of the assumption of jurisdiction or certification thereof to the NLRC for compulsory arbitration, all striking or locked-out employees should immediately return to work and the employer should immediately resume operations and readmit all of them under the same terms and conditions prevailing before the strike or lockout. This is compounded further by the Court’s rulings which have never interpreted the phrase “immediately return to work” found in Article 263 [g] to mean “within twenty four (24) hours.” On the other hand, the tenor of these ponencias indicates an almost instantaneous or automatic compliance for a striker to return to work once an assumption of jurisdiction order (AJO) has been duly served.

• **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.

• **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.

• **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.

• **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 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.

c. Liability for illegal acts should be determined on an individual basis.

To avoid rendering illusory the recognition of the right to strike, responsibility for the commission of illegal acts during the strike should be determined individually and not collectively. A different conclusion would be called for, of course, if the existence of force or other prohibited activities while the strike lasts is pervasive and widespread, consistently and deliberately resorted to as a matter of policy by the union. It could be reasonably concluded then that even if the strike is justified as to ends, it may become illegal because of the means employed. (Shell Oil Workers v. Shell Oil Co., G.R. No. L-28607, May 31, 1971, 39 SCRA 276, 292; Philippine Marine Officers’ Guild v. Compañía Marítima, G.R. Nos. L-20662 and L-20663, March 19, 1968, 22 SCRA 1113, 131 Phil. 218, 232).

In all cases, the erring strikers must be identified individually although proof beyond reasonable doubt is not required. Substantial evidence available under the attendant circumstances which may justify the imposition of the penalty of dismissal may suffice. (Sukothai Cuisine and Restaurant v. CA, G.R. No. 150437, July 17, 2006; Association of Independent Unions in the Philippines [AIUP] v. NLRC, G.R. No. 120505, March 25, 1999, 305 SCRA 219; 364 Phil. 697, 709).

d. Only members who are identified as having participated in the commission of illegal acts are liable.

The rule is well-entrenched that only the union members who have participated in the commission of violence and other illegal acts should be penalized and suffer the consequences of their own acts. Those who did not participate should not be blamed therefor. (Philippine Education Co., Inc. v. CIR, G.R. No. L-7156, May 31, 1955; Cromwell Commercial Employees and Laborers Union v. CIR, G.R. No. L-19778, Sept. 30, 1964).

If the evidence on record failed to disclose any active participation in the commission of illegal acts of the cited employees during the illegal strike, they incur no liability for the said strike. They cannot be held responsible for an illegal strike solely on the basis of union membership. (CCBPI Postmix Workers Union v. NLRC, G.R. No. 114521, Nov. 27, 1998; Arica v. Minister of Labor, G.R. No. L-53427, June 27, 1985, 137 SCRA 267, 277).
Simply referring to them as “strikers,” or “complainants in this case” is not enough to justify their dismissal. (Association of Independent Unions in the Philippines [AIUP] v. NLRC, G.R. No. 120505, March 25, 1999, 305 SCRA 219; 364 Phil. 697, 707; G & S Transport Corp. v. Infante, G.R. No. 160303, Sept. 13, 2007).

It is necessary for the employer to adduce proof on the participation of the striking employees in the commission of illegal acts during the strikes. (Toyota Motor Phils. Corp. Workers Association [TMPCWA] v. NLRC, G.R. Nos. 158786 & 158789, Oct. 19, 2007). In Arellano University Employees and Workers Union v. CA, [G.R. No. 139940, September 19, 2006], while the university adduced photographs showing the strikers picketing outside its premises, it failed to identify who they were. It thus failed to meet the “substantiality of evidence test” applicable in dismissal cases.

e. The specific illegal acts committed by each of the strikers must be described with particularity.

To effectively hold ordinary union members liable, those who participated in the commission of illegal acts must not only be identified but the specific illegal acts they each committed should be described with particularity. Thus, in G & S Transport Corp. v. Infante, [G.R. No. 160303, September 13, 2007], the High Court was not convinced that the affidavits of petitioner’s witnesses constitute substantial evidence to establish that illegal acts were committed by respondents. Nowhere in said affidavits did the witnesses cite the particular illegal acts committed by each individual respondent during the strike. Notably, no questions during the hearing were asked relative to the supposed illegal acts. And interestingly, the Labor Arbiter, the proximate trier of fact, also made no mention of the supposed illegal acts in his decision.

In National Union of Workers in the Hotel, Restaurant and Allied Industries [NUWHRAIN-APL-IUF] Dusit Hotel Nikko Chapter v. The Honorable CA, [G.R. Nos. 163942 and 166295, November 11, 2008], while the Hotel was able to prove before the NLRC that the strikers blocked the ingress to and egress from the premises of the Hotel, but it failed to specifically point out the participation of each of the union members in the commission of illegal acts during the picket and the strike. For this lapse in judgment or diligence, the sixty-one (61) ordinary union members were ordered reinstated.

• Who is a strike breaker?

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.

• 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).*

**• 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).*

**RIGHT TO SELF-ORGANIZATION IN THE GOVERNMENT SERVICE.**

The exercise of the right to organize of government employees as provided for under Executive Order No. 180, June 1, 1987 has always been part of the coverage of the Bar Examination in Labor Law. A discussion, therefore, on this point is in order.
Although Article 276 of the Labor Code is silent on the right of employees in the government service to self-organization and collective bargaining, the 1987 Constitution provides in no uncertain terms that “the right to self-organization shall not be denied to government employees.” (See Section 5, Article IX [b], [The Civil Service Commission] thereof).

Moreover, the policy laid down under the Bill of Rights of the Constitution clearly guarantees the right of the people employed in the public sector to form unions, associations, or societies for purposes not contrary to law. (Section 8, Article III, Bill of Rights, 1987 Constitution).

Under Section 3, Article XIII of the 1987 Constitution, it is also guaranteed to all workers, including those in the government service, the exercise of the right to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. Not only this. Under the same provision, they are entitled to security of tenure, humane conditions of work and a living wage, and to participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

It is thus clear that the right to organize is afforded to all kinds of workers both in the private and public sectors.

The right of civil servants to organize themselves was positively recognized in Association of Court of Appeals Employees [ACAE] v. Ferrer-Calleja, [203 SCRA 596, November 15, 1991]. But, as in the exercise of the rights of free expression and of assembly, there are standards for allowable limitations such as the legitimacy of the purposes of the association, the overriding considerations of national security and the preservation of democratic institutions.

RIGHT TO ORGANIZE GOVERNMENT EMPLOYEES’ ORGANIZATIONS.

a. Who may join government employees’ organizations?

All employees of all branches, subdivisions, instrumentalities, and agencies of government, including government-owned and/or controlled corporations with original charters, can form, join or assist employees’ organizations of their own choosing for the furtherance and protection of their interests. They can also form, in conjunction with appropriate government authorities, labor-management committees, work councils and other forms of workers’ participation schemes to achieve the same objectives. (Sections 1 and 2, Executive Order No. 180, June 01, 1987; Section 1, Rule II, Rules and Regulations to Govern the Exercise of the Right of Government Employees to Self-Organization).

Membership in employees’ organizations formed for purposes of negotiation is open to all rank-and-file employees. (Section 2, Rule II, Ibid.).

b. “Employees’ organization,” defined.

An “employees’ organization” refers to any organization or association of employees in a government agency. (Section 1 [h], Rule I, Ibid.).

In the private sector, this is technically known as “labor organization” or simply “union.”
116

**c. “Registered employees’ organization,” defined.**

A “registered employees’ organization” refers to any employees’ organization or association duly registered with the Civil Service Commission (CSC) and the Bureau of Labor Relations (BLR) of the Department of Labor and Employment (DOLE). *(Section 1 [i], Rule I, Ibid.)*

In the private sector, this is theoretically known as a “legitimate labor organization.”

**d. “Accredited employees’ organization,” defined.**

An “accredited employees’ organization” refers to a registered organization of rank-and-file employees recognized as the sole representative to negotiate for the employees in an organizational unit headed by an officer with sufficient authority to bind the agency such as heads of departments, bureaus and offices of equivalent rank in the national government, including government-owned and/or controlled corporations with original charters, state colleges and universities, and national government, and considering the nature of the matter subject for negotiation. *(Section 1 [j], Rule I, Ibid.)*

In the private sector, this is in principle known as a “recognized or certified collective bargaining agent.”

**e. “Organizational unit,” defined.**

An “organizational unit” refers to the unit where the government employees’ organization seeks to operate and represent. It is the employer’s unit consisting of rank-and-file employees unless circumstances otherwise require. *(Section 9, Executive Order No. 180, June 01, 1987).*

In the private sector, this is technically known as “bargaining unit.”

**f. Who are not eligible to join employees’ organizations?**

The following are not eligible to form employees’ organizations:

1. High-level employees whose functions are normally considered as policy-making or managerial or whose duties are of a highly confidential nature are not eligible to join the organization of rank-and-file government employees; *(Section 3, Executive Order No. 180, June 01, 1987; Section 2, Rule II, Ibid.)*
2. Members of the Armed Forces of the Philippines;
3. Police officers;
4. Policemen;
5. Firemen; and
6. Jail guards. *(Section 4, Executive Order No. 180; Section 1, Rule II, Ibid.; See also Chapter 6, Book V, Administrative Code of 1987 [Executive Order No. 292]).*

**g. Classification of employees in the government.**

Government employees, for purposes of determining who can exercise the right to self-organization, may be classified as follows:
1. **High-Level Employee** - one whose functions are normally considered policy determining, managerial or one whose duties are highly confidential in nature. A managerial function refers to the exercise of powers such as:
   a. to effectively recommend managerial actions;
   b. to formulate or execute management policies and decisions; or
   c. to hire, transfer, suspend, lay-off, recall, dismiss, assign or discipline employees.

2. **Rank-and-file Employee** - one whose functions do not fall under any of those enumerated for high-level employees. This term includes an employee whose work has ceased as a result of, or in connection with, any current dispute or because of any unfair labor practice except as may otherwise be determined by the Public Sector Labor-Management Council. (Section 1 [l] and [m], Rule I, Ibid.).

**h. Registration of employees’ organizations.**

The term “registration” refers to the processing of the application for registration of an employees’ organization and the issuance of the corresponding certificate of registration. (Section 1 [n], Rule I, Ibid.).

**i. Application for registration; where filed.**

Government employees’ organizations are required to register with both the Civil Service Commission (CSC) and the Department of Labor and Employment (DOLE).

The application should be filed with the Bureau of Labor Relations (BLR) of the Department of Labor and Employment which shall process the same in accordance with the provisions of the Labor Code. Applications may also be filed with the DOLE Regional Offices which shall immediately transmit the said applications to the BLR within three (3) days from receipt thereof.

Upon approval of the application, a certificate of registration should be issued to the organization recognizing it as a legitimate employees’ organization with the right to represent its members and undertake activities to further defend their interests. The corresponding certificate of registration shall be jointly approved by the Chairman of the CSC and the DOLE Secretary. (Sections 7 and 8, Executive Order No. 180, June 01, 1987).

**j. 10% support of employees in the organizational unit needed to file an application for registration.**

The application for registration of a government employees’ organization should be signed by at least ten percent (10%) of the employees in the appropriate organizational unit which the applicant employees’ organization seeks to represent, and shall be accompanied by the following:

1. One hundred pesos (₱100.00) registration fee;
2. The names and addresses of the officers, the principal address of the organization, the minutes of the organizational meeting and the list of the employees who participated in such meeting;
3. The names of the employees comprising at least ten percent (10%) of all the employees in the appropriate organizational unit where it seeks to operate;
4. If the applicant employees’ organization has been in existence for one year or more, copies of its financial reports;

5. Four (4) copies of the constitution and by-laws of the applicant organization, minutes of its adoption, and the list of the employees who participated therein. *(Section 1, Rule IV, Rules and Regulations to Govern the Exercise of the Right of Government Employees to Self-Organization, as amended by Section 2, Resolution dated May 24, 1989 issued by the Public Sector Labor-Management Council).*

The BLR and the Office of Personnel Relations of the CSC shall keep and maintain a record indicating the status of registered employees’ organizations.

**k. Rights and privileges of a registered employees’ organization.**

Upon the issuance of the certificate of registration, the employees’ organization shall have the following rights and privileges:

a. To be certified, subject to the conditions prescribed in the Rules and Regulations to Govern the Exercise of the Right of Government Employees to Self-Organization, as the sole representative of the rank-and-file employees with the right to negotiate for them.

b. To undertake all other activities not contrary to law or public policy for the furtherance and protection of the interests of its members. *(Sections 4 and 5, Rule IV, Ibid.)*

**l. Organizational unit.**

The appropriate “organizational unit” is the employer’s unit consisting of rank-and-file employees unless circumstances otherwise require. *(Section 9, Executive Order No. 180, June 01, 1987).*

For registration purposes, an appropriate organizational unit may refer to:

a. Departments, including all their staff bureaus and regional offices;

b. Line bureaus and their regional offices or equivalent units, if any;

c. Attached agencies;

d. State universities or colleges, or government-owned and/or controlled corporations with original charters;

e. Provinces, cities or municipalities;

f. Such other clearly identifiable government units as may be considered by the Public Sector Labor-Management Council (Council), taking into account the following:

1. Desire of employees;
2. Commonality of interest; or
3. Exigencies of the public service.

The foregoing criteria should also be used by the Council in determining an employer unit within a Department. *(Section 1, Rule IV, Ibid.)*

**CANCELLATION OR REVOCATION OF CERTIFICATE OF REGISTRATION.**

The certificate of registration of any registered employees’ organization may be cancelled at any time for cause on any of the following grounds:
a. Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto;

b. Failure to submit the constitution and by-laws or amendments thereto within thirty (30) days from its adoption or ratification;

c. Misrepresentation, false statement or fraud in connection with the election of officers, minutes of the election of officers, the list of voters/members, or failure to submit these documents together with the list of the newly elected/appointed officers and their addresses within thirty (30) days from election;

d. Commission of acts or engaging in activities contrary to law;

e. Checking-off the special assessments or any other fees without the duly signed individual written authorization of the members; and

f. Failure to submit list of individual members to the BLR once a year or whenever required. (Section 1, Rule VII, Ibid.).

The BLR shall serve the notice of the cancellation proceedings to the employees’ organization concerned stating the grounds therefor at least five (5) days before the scheduled date of hearing. (Section 2, Rule VII, Ibid.).

The Chairman of the CSC and the DOLE Secretary shall issue the order of revocation of the certificate of registration. The order or decision shall be final. (Section 3, Rule VII, Ibid.).

RIGHT TO COLLECTIVELY BARGAIN IN THE GOVERNMENT SECTOR.

a. Selection of the sole and exclusive representative.

The duly registered employees’ organization having the support of the majority of the employees in the appropriate organizational unit should be designated as the sole and exclusive representative of the employees. (Section 10, Executive Order No. 180, June 01, 1987).

1. Voluntary recognition.

Under Section 11 of Executive Order No. 180, it is provided that a duly registered employees’ organization should be accorded voluntary recognition upon a showing that no other employees’ organization is registered or is seeking registration in the organizational unit, based on the records of the Bureau of Labor Relations (BLR), and that the said organization has the majority support of the rank-and-file employees in the organizational unit.

But under Section 1, Rule V of the Rules and Regulations to Govern the Exercise of the Right of Government Employees to Self-Organization, the certification that there is only one (1) registered employees’ organization in the organizational unit representing the majority of the total rank-and-file personnel of said agency should be issued by the Office of Personnel Services of the Civil Service Commission (CSC) and not the BLR, in order that the same may be recognized and accredited to represent the employees of the agency in negotiating with the employer on matters affecting the interests of the employees.

At any rate, whether the certification is issued by the BLR or the CSC, voluntary recognition should be extended to the government employees’ organization once the basic requirements as afore-described are fully met.
2. Certification election in an unorganized unit.

Under Section 12 of Executive Order No. 180, it is enunciated that where there are two or more duly registered employees’ organizations in the appropriate organizational unit, the BLR shall, upon petition, order the conduct of a certification election and shall certify the winner as the exclusive representative of the rank-and-file employees in said organizational unit. (Section 12, Executive Order No. 180, June 01, 1987).

But under Section 2, Rule V of the Rules and Regulations to Govern the Exercise of the Right of Government Employees to Self-Organization, it is the Office of Personnel Relations of the CSC that should determine which of the organizations should be accredited, in case there are two or more registered employees’ organizations in a particular agency requesting accreditation.

3. Certification election in an organized unit.

In case two or more registered rank-and-file employees’ organizations contest the representation of the majority of the rank-and-file employees, a certification election should be conducted in accordance with the Rules and Regulations to Govern the Exercise of the Right of Government Employees to Self-Organization. The certification election should include all registered employees’ organizations in the organizational unit. (Section 3, Rule V, Ibid.).

Failure of an accredited employees’ organization to maintain the support of the majority of the rank-and-file employees shall constitute a ground for a challenge which shall be processed in accordance with the Rules and Regulations to Govern the Exercise of the Right of Government Employees to Self-Organization. (Section 4, Rule V, Ibid.).

b. Who may file a petition for certification election?

A petition for certification election may be filed by any of the following:

1. The employer; or
2. Any of the registered employees’ organizations.

c. Petition for certification election, where filed.

The petition for certification election should be filed with the BLR or with any of the Regional Offices which shall forward the petition to the BLR within three (3) days from receipt thereof. (Section 1, Rule VI, Ibid.).

d. BLR has jurisdiction over petitions for certification election in the public sector.

The apparent conflict between the BLR and the CSC in the matter of which has the jurisdiction to hear and decide certification election cases in the public sector was squarely addressed in the case of Association of Court of Appeals Employees (ACAE) v. Ferrer-Calleja, [G.R. No. 94716, November 15, 1991, 203 SCRA 596]. In holding that it is the BLR which has the jurisdiction to call for, and supervise the conduct of, certification elections in the public sector, the Supreme Court pronounced:

“... In the same way that CSC validly conducts competitive examinations to grant requisite eligibilities to court employees, we see no constitutional objection to DOLE handling the certification process in the Court
of Appeals, considering its expertise, machinery, and experience in this particular activity. Executive Order No. 180 requires organizations of government employees to register with both CSC and DOLE. This ambivalence notwithstanding, the CSC has no facilities, personnel, or experience in the conduct of certification elections. The BLR has to do the job.

“Executive Order No. 180 states that certificates of registration of the legitimate employees’ representatives must be jointly approved by the CSC Chairman and the DOLE Secretary. Executive Order No. 180 is not too helpful in determining whose opinion shall prevail if the CSC Chairman and the DOLE Secretary arrive at different conclusions. At any rate, we shall deal with that problem when it occurs. Insofar as the power to call for and supervise the conduct of certification elections is concerned, we rule against the petitioner. (See also Bautista v. Hon. CA, G. R. No. 123375, Feb. 28, 2005).

**e. Legal basis for BLR’s exercise of jurisdiction over inter-union and intra-union disputes in the public sector.**

The authority of the BLR in assuming jurisdiction over a certification election, or any inter-union or intra-union conflicts, is found in Article 226 of the Labor Code.

It is quite clear from this provision that the BLR has the original and exclusive jurisdiction on all inter-union and intra-union conflicts. An intra-union conflict refers to a conflict within or inside a labor union, and an inter-union controversy or dispute refers to one occurring or carried on between or among unions. (Pepsi-Cola Sales and Advertising Union v. Hon. Secretary of Labor, G.R. No. 97092, July 27, 1992).

Thus, in the case of Bautista v. Hon. Court of Appeals, [G.R. No. 123375, February 28, 2005], involving the election of the officers and members of the board of Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa Metropolitan Waterworks and Sewerage System (KKMK-MWSS), it was ruled that the BLR has jurisdiction over this issue as it is clearly an intra-union conflict, being within or inside a labor union. It is well within the powers of the BLR to act upon. The exercise of such jurisdiction applies to both inter-union and intra-union conflicts.

Executive Order No. 180, particularly Section 16 thereof, is completely lucid as to the settlement of disputes involving government employees, viz:

“Section 16. The Civil Service and labor laws and procedures, whenever applicable, shall be followed in the resolution of complaints, grievances and cases involving government employees.”

Since Article 226 of the Labor Code has declared that the BLR has original and exclusive authority to act on all inter-union and intra-union conflicts, then there should be no more doubt as to its jurisdiction.

**f. Form and contents of a petition for certification election.**

The petition for certification election should be in writing and under oath and should contain, among others, the following:

a. The name of the petitioner and its address;
b. The name and address of the employer; and

c. The total number of rank-and-file employees in the subject organizational unit.

g. 20% support for petition for certification election.

A petition filed by a registered employees’ organization should contain the signatures of at least twenty percent (20%) of the rank-and-file employees in the subject organizational unit. (Section 2, Rule VI, Rules and Regulations to Govern the Exercise of the Right of Government Employees to Self-Organization).

h. One-year prohibition.

A petition for certification election may be filed at any time but no certification election may be held within one (1) year from the date of the issuance of a declaration of the final certification election result. (Section 3, Rule VI, Ibid.).

i. Procedure in the certification election proceedings.

Upon receipt of a petition for certification election, the BLR should conduct a hearing to determine whether or not a certification election is necessary. Should there be a need for a certification election, the order shall contain the following:

a. Names of the contending government employees’ organizations;

b. Name of the employer;

c. Description of the subject organizational unit;

d. List of eligible voters; and

e. Date and time of the certification election.

If possible, the certification election should be held within fifteen (15) days from receipt by the parties of the decision. (Section 4, Rule VI, Ibid.).

The BLR should cause the posting of the necessary notices at least five (5) days before the date of the certification election in at least two (2) conspicuous places in the employer’s premises. The notices should contain the date of the election, the names of the contending organizations, the description of the subject organizational unit and the list of eligible voters. (Section 5, Rule VI, Ibid.).

The election should be held during regular office hours, unless otherwise agreed upon. (Section 6, Rule VI, Ibid.).

The BLR should designate a representation officer who shall have the following functions:

a. Before the actual voting commences, to inspect, in the presence of the representatives of the parties, the ballot boxes and polling booths to ensure secrecy of the ballots;

b. After the examination of the ballot boxes, to lock them and keep the keys during the entire proceedings; and

c. To conduct the election and adopt measures to preserve the sanctity of the ballots. The BLR should designate assistant representation officer/s whenever necessary. (Section 7, Rule VI, Ibid.).
The ballots should be prepared in Pilipino or in English and shall contain serial numbers and the signature of the representation officer at the back thereof. *(Section 8, Rule VI, Ibid.)*

The voter must write a cross (x) or a check (✔) in the square opposite the name of the registered employees’ organization of his choice. *(Section 9, Rule VI, Ibid.)*

If a ballot is torn, marked, or defaced in such a manner that would identify the voter, it shall be considered spoiled. If the voter inadvertently spoils a ballot, he should return it to the representation officer who should destroy it and issue another ballot. *(Section 10, Rule VI, Ibid.)*

Any voter may be challenged for a valid cause by any duly authorized party representative before the voter casts his vote. *(Section 11, Rule VI, Ibid.)*

If a voter is challenged on valid grounds, the representation officer should segregate his ballot from the unchallenged ballots and seal the questioned ballot in an envelop indicating the name of the challenger and the ground of the challenge. *(Section 12, Rule VI, Ibid.)*

At the end of the voting, the votes cast should be counted and tabulated by the representation officer in the presence of the representatives of the parties. If the total votes cast is less than the majority of the total eligible voters in the subject organizational unit, the representation officer should declare a failure of election. Otherwise, he should canvass the votes. Upon completion of the canvassing, the representation officer shall give each representative a certification of the results and the minutes of the election. *(Section 13, Rule VI, Ibid.)*

The ballots, tally sheets, and certification of the results, together with the minutes of the elections, should be sealed in an envelope and signed outside by the representation officer and by the representatives of the contending parties. These envelopes should remain sealed under the custody of the representation officer and should be submitted to the BLR which shall proclaim the winner immediately. *(Section 14, Rule VI, Ibid.)*

The organization which obtained the majority of the total number of valid votes cast should be certified and accredited as the sole and exclusive representative of all the rank-and-file employees in the subject organizational unit and shall remain as such unless challenged by another registered employees’ organization in a petition for certification election, subject to the limitation prescribed in Section 3, Rule VI of the Rules and Regulations to Govern the Exercise of the Right of Government Employees to Self-Organization. *(Section 15, Rule VI, Ibid.)*

A formal protest may be filed within five (5) days from the close of the election proceedings with the BLR which shall decide the same within twenty (20) days from the date of filing. No protest should be entertained after the lapse of the five-day period. Neither shall a protest be entertained based on grounds not raised and recorded during the balloting. *(Section 16, Rule VI, Ibid.)*

**j. Run-off election.**
In cases where there are at least three (3) contending organizations and none received a majority of the valid votes cast, the representation officer should *motu proprio* conduct a run-off election within five (5) days from the close of the election.

In the run-off election, the rank-and-file employees should vote on the two (2) registered employees’ organizations receiving the largest and second largest number of votes in the first voting. *(Section 17, Rule VI, Ibid.)*

**k. Right to collectively bargain with the employer.**

Only workers in private corporations and government-owned and/or controlled corporations, incorporated under the general corporation law (Corporation Code), have the right to bargain collectively. Those in government corporations with special charter (original charter), which are subject to Civil Service Laws, have no right to bargain collectively, *except* where the terms and conditions of employment are not fixed by law. Their rights and duties are not comparable with those in the private sector. *(Home Development Mutual Fund v. Commission on Audit, G.R. No. 142297, June 15, 2004 citing Association of Dedicated Employees of the Philippine Tourism Authority [ADEPT] v. Commission on Audit, G.R. No. 119597, Sept. 11, 1998, 295 SCRA 366).*

**l. Terms and conditions subject to negotiation.**

The terms and conditions of employment of all government employees, including employees of government-owned and/or controlled corporations with original charters, are governed by the Civil Service Law, rules and regulations. Their salaries are standardized by the National Assembly (now Congress) as provided in the New Constitution (1987 Constitution). However, there shall be no reduction of existing wages, benefits and other terms and conditions of employment being enjoyed by them at the time of the adoption of the Labor Code. *(Article 276, Labor Code).*

Terms and conditions of employment or improvements thereof, *except* those that are fixed by law, may be the subject of negotiations between duly recognized employees’ organizations and appropriate government authorities. *(Section 13, Executive Order No. 180, June 01, 1987; Section 1, Rule VIII, Ibid.)*

The following concerns, among others, may be the subject of negotiation between the employer and the accredited employees’ organization:

- Schedule of vacation and other leaves;
- Work assignment of pregnant women;
- Personnel growth and development;
- Communication system - lateral and vertical;
- Provision for protection and safety;
- Provision for facilities for handicapped personnel;
- Provision for first aid medical services and supplies;
- Physical fitness program;
- Provision for family planning services for married women;
- Annual medical/physical examination;
k. Recreational, social, athletic and cultural activities and facilities. *(Section 2, Rule VIII, Rules and Regulations to Govern the Exercise of the Right of Government Employees to Self-Organization).*

**m. Matters not subject to negotiation.**

Matters not subject to negotiation may be classified as follows:

a. Those that require appropriation of funds; and  
b. Those that involve the exercise of management prerogatives.

Those that require appropriation of funds, such as the following, are not negotiable:

a. Increase in salary emoluments and other allowances not presently provided by law;  
b. Facilities requiring capital outlays;  
c. Car plan;  
d. Provident fund;  
e. Special hospitalization, medical and dental services;  
f. Rice/sugar/other subsidies;  
g. Travel expenses;  
h. Increase in retirement benefits. *(Section 3, Rule VIII, Ibid.)*

Those that involve the exercise of management prerogatives, such as the following, are likewise not subject to negotiation:

a. Appointment;  
b. Promotion;  
c. Assignment/detail;  
d. Reclassification/upgrading of positions;  
e. Revision of the compensation structure;  
f. Penalties imposed as a result of disciplinary actions;  
g. Selection of personnel to attend seminars, trainings or study grants;  
h. Distribution of work load;  
i. External communication linkages. *(Section 4, Rule VIII, Ibid.)*

The parties may submit proposals to the proper authorities to improve the terms and conditions of their employment. *(Section 5, Rule VIII, Ibid.)*

**RIGHT TO STRIKE IN THE GOVERNMENT SERVICE.**

**a. Prohibition on the right to strike.**

Employees in the government or public sector as well as those employed in government owned and/or controlled corporations with original charters have neither the right to strike nor the right to bargain collectively as defined in the Labor Code.

As enunciated in Executive Order No. 292 *[The Administrative Code of 1987]*, civil service employees who may have some complaints or grievances are not left without any remedy. They are granted the right to present their complaints or grievances to management and have them adjudicated as expeditiously as possible in the best interest of the agency, the government as a whole, and the employees concerned. Such complaints or grievances are mandated to be resolved at the lowest possible level in the department or agency, as the case may be. In the event that the employees are not satisfied with the decision on their complaints or grievances, they are given the right to appeal them to higher authorities. In case any disputes remain unresolved after
exhausting all the available remedies under existing laws and procedure, the parties have the right
to jointly refer the same to the Public Sector Labor-Management Council for appropriate action.

b. Governing law on peaceful concerted activities and strikes.

In the event of concerted activities and strikes, the Civil Service Law and rules governing
concerted activities and strikes in the government service shall be observed by all government
employees, whether or not they are members of employees’ organizations, subject to any
legislation that may be enacted by Congress. (Section 14, E. O. No. 180, June 01, 1987; Section
3, Rule II, Rules and Regulations to Govern the Exercise of the Right of Government Employees
to Self-Organization).

Presidential Decree No. 807, [Civil Service Decree of the Philippines (October 6, 1975)],
provides that government employees, including those employed and involved in the proprietary
functions of the government, are prohibited to conduct strike for the purpose of securing changes
in the terms and conditions of their employment which was apparently allowed under Republic

CSC Memorandum Circular No. 6, s. 1987, [April 21, 1987] promulgated by the Civil
Service Commission categorically prohibits all government officials and employees from staging
strikes, demonstrations, mass leaves, walk-outs and other forms of mass action which will result
in the temporary stoppage or disruption of public services. Allowing them to strike or conduct the
said prohibited acts is to undermine or prejudice the government system.

Executive Order No. 180, [June 1, 1987], which provides the guidelines on the exercise
of the right of government workers to organize, implicitly endorsed said CSC Memorandum
Circular No. 6, s. 1987, dated April 21, 1987 [supra] by stating that the Civil Service Law and
rules governing concerted activities and strikes in the government service shall be observed.

c. The Constitution allows the limitation of the right to strike by employees in the
public sector.

Section 3, Article XIII of the 1987 Constitution itself qualifies the exercise of the right to
strike with the proviso “in accordance with law.” This is a clear manifestation that the State
may, by law, regulate the use of this right, or even deny certain sectors such right. It may thus be
asserted that in the absence of a statute, public employees do not have the right to engage in
concerted work stoppages for any purpose, (GSIS v. Kapisanan ng mga Manggagawa sa GSIS,
G.R. No. 170132, Dec. 6, 2006; Bagalisan v. Court of Appeals, G.R. No. 124678, July 31, 1997).

Significantly, 1986 Constitutional Commission member Eulogio Lerum, answering in the
negative the poser of whether or not the right of government employees to self-organization also
includes the right to strike, stated:

“When we proposed this amendment providing for self-organization of
government employees, it does not mean that because they have the right to
organize, they have also the right to strike. That is a different matter. xxx” (See
[1st Ed, 1988]).
d. Jurisprudence affirming the validity of the prohibition to strike.

It is settled in jurisprudence that, in general, workers in the public sector do not enjoy the right to strike. *Alliance of Government Workers v. Minister of Labor and Employment*, [G.R. No. L-60403, August 3, 1983, 124 SCRA 1], rationalized the proscription, thus:

“The general rule in the past and up to the present is that the ‘terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof are governed by law.’ xxx. Since the terms and conditions of government employment are fixed by law, government workers cannot use the same weapons employed by the workers in the private sector to secure concessions from their employers. The principle behind labor unionism in private industry is that industrial peace cannot be secured through compulsion by law. Relations between private employers and their employees rest on an essentially voluntary basis. Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and conditions of employment in the unionized private sector are settled through the process of collective bargaining. In government employment, however, it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through statutes or administrative circulars, rules, and regulations, not through collective bargaining agreements.”

After delving on the intent of the framers of the Constitution, the Supreme Court affirmed the above rule in *Social Security System Employees Association (SSSEA) v. Court of Appeals*, [G.R. No. 85279, July 28, 1989, 175 SCRA 686], and explained:

“Government employees may, therefore, through their unions or associations, either petition the Congress for the betterment of the terms and conditions of employment which are within the ambit of legislation or negotiate with the appropriate government agencies for the improvement of those which are not fixed by law. If there be any unresolved grievances, the dispute may be referred to the Public Sector Labor-Management Council for appropriate action. But employees in the civil service may not resort to strikes, walkouts and other temporary work stoppages, like workers in the private sector, to pressure the Government to accede to their demands. As now provided under Sec. 4, Rule III of the Rules and Regulations to Govern the Exercise of the Right of Government Employees to Self-Organization, which took effect after the instant dispute arose, ‘[t]he terms and conditions of employment in the government, including any political subdivision or instrumentality thereof and government-owned and controlled corporations with original charters are governed by law and employees therein shall not strike for the purpose of securing changes [thereto].’” (See also *MPSTA v. Laguio, Jr.*, G.R. No. 95445 Aug. 6, 1991; *Alliance of Concerned Teachers v. Cariño*, 200 SCRA 323; *Home Development Mutual Fund v. Commission on Audit*, G.R. No. 142297, June 15, 2004).

e. What constitutes a strike in the government service?

A mass action or protest may actually be considered a strike if the circumstances indicate that the elements thereof are present. In holding that the mass action or assembly staged by the
petitioners in *Jacinto v. Hon. CA*, [G.R. No. 124540. November 14, 1997], was actually a strike, the High Court emphasized that it resulted in the non-holding of classes in several public schools during the corresponding period. Petitioners further do not dispute that the grievances for which they sought redress concerned the alleged failure of public authorities - essentially, their “employers” - to fully and justly implement certain laws and measures intended to benefit them materially, such as the immediate release of ₱680 million Secondary Education Fund (SEF), fringe benefits of teachers under Section 17 of Republic Act No. 6758; clothing allowance of ₱500.00 to ₱1,000.00 per teacher under the General Appropriations Act of 1990; DMB Circular 904 and increase in minimum wage to ₱5,000.00 for teachers. And probably, to clothe their action with permissible character, they also raised national issues such as the removal of the U.S. bases and the repudiation of foreign debt.

In *Bagalisan v. Court of Appeals*, [G.R. No. 124678, July 31, 1997], it was held that the fact that the conventional term “strike” was not used by the participants to describe their common course of action was insignificant, since the substance of the situation, and not its appearance, was deemed controlling. Further, it was held therein, citing *MPSTA v. Laguio, Jr.*, [G.R. No. 95445 August 6, 1991], that employees in the public service may not engage in strikes or in concerted and unauthorized stoppage of work and that the right of government employees to organize is limited to the formation of unions or associations, without including the right to strike.

The case of *Gesite v. CA*, [G.R. Nos. 123562-65, November 25, 2004, 444 SCRA 51], the High Court likewise reiterated the said limitations on the right of government employees to strike. It further added that public employees going on disruptive unauthorized absences to join concerted mass actions may be held liable for conduct prejudicial to the best interest of the service.

In the case of *GSIS v. Kapisanan ng mga Manggagawa sa GSIS*, [G.R. No. 170132, December 6, 2006], in pronouncing that the four-day October 2004 concerted demonstrations, rallies and en masse walkouts waged and held in front of the GSIS main office in Roxas Boulevard, Pasay City was a strike staged by the respondents, the Supreme Court ratiocinated as follows:

“xxx what respondent’s members launched or participated in during that time partook of a strike or, what contextually amounts to the same thing, a prohibited concerted activity. The phrase “prohibited concerted activity” refers to any collective activity undertaken by government employees, by themselves or through their employees’ organization, with the intent of effecting work stoppage or service disruption in order to realize their demands or force concessions, economic or otherwise; it includes mass leaves, walkouts, pickets and acts of similar nature. Indeed, for four straight days, participating KMG members and other GSIS employees staged a walkout and waged or participated in a mass protest or demonstration right at the very doorstep of the GSIS main office building. The record of attendance for the period material shows that, on the first day of the protest, 851 employees, or forty eight percent (48%) of the total number of employees in the main office (1,756) took to the streets during office hours, from 6 a.m. to 2 p.m., leaving the other employees to fend for themselves in an office where a host of transactions take place every business day. On the second day, 707 employees left their respective work stations, while 538
participated in the mass action on the third day. A smaller number, i.e., 306 employees, but by no means an insignificant few, joined the fourth day activity.

“To say that there was no work disruption or that the delivery of services remained at the usual level of efficiency at the GSIS main office during those four (4) days of massive walkouts and wholesale absences would be to understate things. And to place the erring employees beyond the reach of administrative accountability would be to trivialize the civil service rules, not to mention the compelling spirit of professionalism exacted of civil servants by the Code of Conduct and Ethical Standards for Public Officials and Employees.

“The appellate court made specific reference to the ‘parliament of the streets,’ obviously to lend concurrence to respondent’s pretension that the gathering of GSIS employees on October 4-7, 2004 was an ‘assembly of citizens’ out only to air grievances, not a striking crowd. According to the respondent, a strike presupposes a mass action undertaken to press for some economic demands or secure additional material employment benefits.

“We are not convinced.

“In whatever name respondent desires to call the four-day mass action in October 2004, the stubborn fact remains that the erring employees, instead of exploring non-crippling activities during their free time, had taken a disruptive approach to attain whatever it was they were specifically after. As events evolved, they assembled in front of the GSIS main office building during office hours and staged rallies and protests, and even tried to convince others to join their cause, thus provoking work stoppage and service-delivery disruption, the very evil sought to be forestalled by the prohibition against strikes by government personnel.

“The Court can concede hypothetically that the protest rally and gathering in question did not involve some specific material demand. But then the absence of such economic-related demand, even if true, did not, under the premises, make such mass action less of a prohibited concerted activity. For, as articulated earlier, any collective activity undertaken by government employees with the intent of effecting work stoppage or service disruption in order to realize their demands or force concessions, economic or otherwise, is a prohibited concerted mass action [under CSC Resolution No. 021316, Sec. 5.] and doubtless actionable administratively. Bangalisan even went further to say the following: ‘[i]n the absence of statute, public employees do not have the right to engage in concerted work stoppages for any purpose.’

- END OF PART THREE -