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State Intervention in Labor Relations:
Focus on National Interest Cases and Enforcement

A Presentation by
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Legal Framework

Sec. 3, Art. XIII, 1987 Philippine Constitution

The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment for all. It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike . . .
(underscoring supplied)

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

Legal Framework

Art. 263(g), Labor Code, as amended

When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification order shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order . . . (underscoring supplied)

Legal Framework

Sec. 22, General Banking Law of 2000 (04/12/2000)

The banking industry is hereby declared as indispensable to the national interest and, notwithstanding the provisions of any law to the contrary, any strike or lockout involving banks, if unsettled after seven (7) calendar days shall be reported by the Bangko Sentral to the Secretary of Labor who may assume jurisdiction over the dispute or decide it or certify the same to the National Labor Relations Commission for compulsory arbitration. However, the President of the Philippines may at any time intervene and assume jurisdiction over such labor dispute in order to settle or terminate the same.

Jurisprudence

Article 263(g):

“plenary power” – *Justice A.V. Panganiban, concurring opinion re: Phimco Industries v. Brillantes. G.R. No. 120751, 03/17/1999.*

“extraordinary authority” – *Justice L.D. Medialdea, Union of Filipro Employees v. Nestle Phils. Inc., 192 SCRA 396, 410. G.R. Nos. 88710-13, 12/19/1990; Justice C.G. Aquino, Philthread Tire & Rubber Corp. v. NLRC and ADFLO, G.R. No. 102185, 02/15/1993.*

“police power” – *Union of Filipro Employees v. Nestle Phils. Inc., 192 SCRA 396, 410. G.R. Nos. 88710-13, 12/19/1990; Union of Filipro Employees v. NLRC, Nestle Phils. Inc., G.R. No. 91025, 12/19/1990.*

The Situation

State Intervention in Labor Disputes: The Past Five Years – 2003-2007

Year	Cases Handled	AJ	% Share
2003	1401	45	3.21
2004	1254	42	3.35
2005	1190	30	2.52
2006	934	16	1.71
2007	853	26	3.05
Total	5632	159	2.82

Legend: AJ – assumed jurisdiction

Source of data: National Conciliation and Mediation Board

The Situation

State Intervention in Labor Disputes: The Past Five Years – 2003-2007

Year	Cases Handled	CCA	% Share
2003	1401	28	2.00
2004	1254	37	2.95
2005	1190	27	2.27
2006	934	29	3.10
2007	853	17	1.99
Total	5632	138	2.45

Legend: CCA – certified for compulsory arbitration
Source of data: National Conciliation and Mediation Board

The Situation

State Intervention in Labor Disputes: The Past Five Years – 2003-2007

Year	Cases Handled	AJ	CCA	Total	% Share
2003	1401	45	28	73	5.21
2004	1254	42	28	70	5.58
2005	1190	26	27	53	4.45
2006	934	17	29	46	4.93
2007	853	26	17	43	5.04
Total	5632	156	129	285	5.06

Legend: AJ – assumed jurisdiction; CCA – certified for compulsory arbitration

Source of data: National Conciliation and Mediation Board

The Situation

State Intervention in Labor Disputes: January – August 31, 2008

Cases Handled	AJ	CCA	Total	% Share
630	5 <i>0.79%</i>	20 <i>3.17%</i>	25	3.97

Legend: AJ – assumed jurisdiction; CCA – certified for compulsory arbitration
Source of data: National Conciliation and Mediation Board

The Situation

Assumption of Jurisdiction by Year and Industry: 2003-08

	2003	2004	2005	2006	2007	J->A-08	Total
AI	45	42	30	16	26	5	164
AHF	1	1	1	1			4
MQ			1				1
MFG	21	20	14	7	12	1	75
EGWS	3	1		1	3		8
CONS	1	1					2
WRT	3	2					5

LEGEND: AI – All Industries; AHF – Agriculture, Hunting & Forestry; MQ – Mining & Quarrying; MFG – Manufacturing; EGWS – Electricity, Gas and Water Supply; CONS – Construction; WRT – Wholesale & Retail Trade
Source of data: National Conciliation and Mediation Board

The Situation

Assumption of Jurisdiction by Year and Industry: 2003-08

	2003	2004	2005	2006	2007	J->A-08	Total
AI	45	42	30	16	26	5	164
HR		6	1		2		9
TSC	2	1	7	1	5	1	17
FI	3	2	1	2	1	1	10
EDUC	9	5	2	4	1		21
HSW	1	1	1		2	2	7
OCSPS	1	2	2				5

LEGEND: AI – All Industries; HR – Hotel & Restaurants; TSC – Transport, Storage & Communication; FI – Financial Intermediation; EDUC – Education; HSW – Health & Social Work; OCSPS – Other Community, Social & Personal Services

Source of data: National Conciliation and Mediation Board

The Situation

Certification for Compulsory Arbitration by Year and Industry: 2003-08

	2003	2004	2005	2006	2007	J->A-08	Total
AI	28	37	27	29	17	20	158
AHF		1				2	3
MQ	2						2
MFG	12	18	17	10	9	8	74
EGWS	2	1		1		1	5
CONS	1						1
WRT		4	2				6

LEGEND: AI – All Industries; AHF – Agriculture, Hunting & Forestry; MQ – Mining & Quarrying; MFG – Manufacturing; EGWS – Electricity, Gas and Water Supply; CONS – Construction; WRT – Wholesale & Retail Trade
Source of data: National Conciliation and Mediation Board

The Situation

Certification for Compulsory Arbitration by Year and Industry: 2003-08

	2003	2004	2005	2006	2007	J->A-08	Total
AI	28	37	27	29	17	20	158
HR			1	2			3
TSC	7	9	3	4	5	2	30
FI	2		1	4	1	4	12
EDUC	1	2	2	5	2	2	14
HSW	1	2	1	2		1	7
RERBA				1			1

LEGEND: AI – All Industries; HR – Hotel & Restaurants; TSC – Transport, Storage & Communication; FI – Financial Intermediation; EDUC – Education; HSW – Health & Social Work; RERBA – Real Estate, Renting & Business Activities

Source of data: National Conciliation and Mediation Board

The Rationale for Using Art. 263(g)

- Protect public welfare and promote the common good
- Mitigate the negative impact of work stoppages and industrial instability on the national economy as a whole

The Rationale for Using Art. 263(g)

- Exercise is in accordance with various Supreme Court rulings
- Approximates ILO's definition of "essential services"

The Rationale for Using Art. 263(g)

ILO Committee of Experts on the Application of
Conventions and Recommendations (1983)

(See ILO Digest, Freedom of Association, 5th (revised ed), pars. 585; 587)

- **Essential services** are “those the interruption of which would endanger the life, personal safety or health of the whole or part of the population.”
- In the strict sense, these include (1) the hospital sector; (2) electricity services; (3) water supply services; (4) the telephone service; and (5) air traffic service.

The Rationale for Using Art. 263(g)

- Difficulty of applying the foregoing definition to different national circumstances
- What is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country
- This concept is not absolute, in the sense that a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health or the whole or part of the population

Cf: par. 582, ILO Digest, Freedom of Association, 5th (revised ed.)

The Rationale for Using Art. 263(g)

Submission:

- The strict and inflexible application of the ILO standard may be self-defeating – a strong medication that may kill rather than cure if unthinkingly applied to one still weak and in the process of gathering strength
- It cannot be seriously assumed that workers' rights are the only objectives that every nation should uphold above everything else, even to the prejudice of the whole of its society

The Rationale for Using Art. 263(g)

The prevailing government's interpretation and system of intervention should be tested against the ILO standard in light of existing national and local circumstances, without forgetting that workers should be assured through sound labor relations policies of a reasonable and adequate level of protection

The Rationale for Using Art. 263(g)

- We cannot compare ourselves with the developed countries and adopt the strictly adversarial labor relations regime that thrives well in these countries
- We cannot blindly sacrifice the rights and welfare of our workers to the requirements of economic growth

The Rationale for Using Art. 263(g)

Most reasonable path: a balanced course between developing our economy and protecting the interests of the different sectors of Philippine society

Government must ensure that workers' basic rights are protected to every extent compatible with the national economic goal

Where do we go from here?

Main thrust in:

labor relations – dispute avoidance and alternative dispute resolution in order to avoid the risk of industrial disturbance and to immediately address any disturbance that may occur

employment – enhanced education and training to fully prepare our workers for available jobs and competition

labor standards – ensure that the most basic labor standards are complied with

Where do we go from here?

➤ DOLE is ready and willing to participate in any initiatives to review Article 263 (g), and for that matter, the 1974 Labor Code, as amended

End of Presentation

Thank you.