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IN THIS ISSUE

Editorial Preface

One of the most encouraging developments in the labor scene today is the surge of interest in promoting the growth of strong and responsible trade unionism. The Labor Code, which took effect two years after President Marcos declared Martial Law in September 1972, has given the labor movement greater sense of purpose and new directions far beyond the parochial interests of local unions and their leaders through various provisions allowing for the transformation of trade unionism from an adversary to a participative, all-encompassing force in national development. In line with the New Government's policy to build a robust, stable economy that will in the long run redound to the benefit of the working class, strikes and lockouts have been confined to non-vital industries. The aim is to avoid disruptions in the country's accelerating economic activities. Significantly, tripartism has been institutionalized as a mechanism for candid discussions and negotiations between labor and management with the government as moderator.

To remove the structural basis of counter-productive rivalries within and among unions, the labor movement is being restructured on a one-union, one-industry concept. Restructuring, it is hoped, would at the same time strengthen trade unionism at the industry level to enable workers to acquire greater leverage in their dealings with employers. At the level of the enterprise, President Marcos, in his Letter of Instructions 688, directed the Ministry of Labor, the Trade Union Congress of the Philippines, and the Employers Confederation of the Philippines to come up with a mechanism for workers' participation in management.

It is against this backdrop that we share with our readers the articles in this issue where the many facets of trade unionism are explored from different angles.

Articulating the government viewpoint, Labor Minister Blas F. Ople underscores the need for stronger trade unions if the coun-

try intends to hasten industrial democracy. He cites the instance where, despite government efforts to promote voluntary arbitration, workers generally prefer to come to the labor ministry for compulsory arbitration of their disputes with management. This implies that local unions as economic pressure groups are as yet incapable of meeting with employers on equal footing. Minister Ople concludes that what is needed therefore is an infrastructure of laws and mechanisms which would redress the severe power imbalance between labor and management.

The view from the academe is presented by Froilan Bacungan of the Law Center of the University of the Philippines. In his article, he reviews the present labor policies and practices of government and traces their possible influence on the promotion of industrial peace.

From the private sector, Justino Cacanindin of the Personnel Management Association of the Philippines discusses the methods and problems of trade union recognition. He stresses that the problems in this area should be taken not in isolation but in the context of the country's political, economic and social conditions. He explains for instance that efforts to resolve problems in union recognition must actually span even as far back as the colonial times that have affected Filipino attitudes and behavior. Mr. Cacanindin notes that in the end, the matter would also largely depend on the sincere concern and the pool of competencies of the leaders and members of the trade unions.

In a related write-up on a study conducted by the Institute of Labor and Manpower Studies on Philippine trade unions, Amelita King reports on findings regarding the nature and level of workers' involvement in local unions. She draws the correlation of these with certain variables such as attitudes, satisfaction, and leadership characteristics.

On workers' participation, Johannes Schregle of the International Labor Organization provides the perspective and history of foreign experience to LOI 688 as he traces the major conceptual sources and forms of workers' participation in management.

On the settlement of industrial disputes, Dean Manuel Dia of the Asian Labor Education Center narrows down his discussion to the current state of voluntary arbitration system in the country. Of the measures that are seen to possibly strengthen the system, he

mentions several, including "a Ministry of Labor sponsored education program to train voluntary arbitrators in all major growth centers of the country."

In another ILMS-supported study, Amaryllis Torres of the Institute of Social Work and Community Development, University of the Philippines, focuses on disputes settlement through grievance machineries. She discusses the results of her research in detail, establishing, among others, that the grievance machinery is indeed effective in working out solutions particularly to the most common types of disputes, but that it has to be improved to increase its effectiveness in meeting the more critical labor relations problems. She suggests that among the support measures which might help operationalize grievance machineries is the launching of a more systematic campaign on grievance handling procedures among workers.

Also in this issue is a study on the Malaysian experience regarding the law on the right to strike, centering on controversial and now publicly documented case of the South East Asia Fire Bricks Company. Apart from its relevance to the theme's issue, this study constitutes the initial attempt of **Philippine Labor Review** to devote a section to ASEAN affairs, in line with the labor ministry's policy to open channels for the exchange of information with the rest of ASEAN countries.

It is hoped that these articles would serve as a springboard for yet further exploration and enlightened discussion on trade unionism as a positive force in instituting a more lasting industrial peace as well as in helping establish total national development.

Contents

The Need for Strong Trade Unions

by Blas F. Ople

The Ministry of Labor is vested with the responsibility of administering both labor-management relations and inter-union and intra-union conflicts. Thus it has always made it a point to inquire about the nature of perceptions behind changes in law or modifications to law, to determine what is necessary in order to promote greater efficiency, greater dispatch and greater effectiveness.

The major innovation in PD 1391, which deals with compulsory arbitration, labor-management cases and representation cases, is the elimination of so many appellate steps and the concentration of the appellate jurisdiction in an expanded National Labor Relations Commission. Part of this law deals with trade unions, the other, with representation cases.

Our basic objective is to promote industrial democracy and justice which are regarded as the foundation of industrial peace. Industrial democracy rests on the existence of a strong trade union movement capable of dealing with management on a more equitable basis. But in a developing country such as the Philippines where, in the first place, the modern sector of the labor force represents a minority vis-a-vis the traditional sector consisting of self-employed farmers, fishermen, forest gatherers, hunters, and unpaid family labor, not to mention the landless rural folks, most of whom are unemployed or under-employed, the clear implication is that in

terms of economic forces trade unions can not really deal with employers as equals if there are no infrastructure of law and a machinery of government which can redress the severe imbalance between these economic and social forces.

This is probably why no matter how much we promote voluntary arbitration and no matter how rational voluntary arbitration is, most of our workers and even a good number of employers still prefer to come to the Ministry of Labor for compulsory arbitration. Even an otherwise helpless individual worker feels that by going to the labor ministry, he has acquired a kind of leverage because there is the law that protects his rights and a machinery to enforce this law.

In more advanced countries like the United States, various forms of voluntary arbitration machineries are available today. Hence, compulsory arbitration, except in times of war, is considered superfluous and, in most cases, unwanted. In these countries, the courts have practically nothing to do with respect to representation cases. In the highly unified trade union movement like the AFL-CIO, inter-union and intra-union disputes are resolved internally. In Washington, at the headquarters of the AFL-CIO, a powerful National Arbitration Committee operates and parties thereto have been conditioned in the habit of accepting all its decisions.

We have experimented with this approach ourselves. We have referred cases to the Arbitration Committee of the Trade Union Congress of the Philippines. This is really a superior approach where unions themselves can resolve their own internal conflicts without having to rely on the government to do it for them. But our experience with cases indorsed to the Trade union Congress of the Philippines (TUCP) for their resolution has not been very reassuring. As a matter of fact, the Bureau of Labor Relations is under pressure to have these cases recalled from the TUCP for decision. This is to illustrate the vast differences in conditions between a developing country and developed countries where we tend to borrow our models of labor-management relations.

In the Philippines, we can point with pride to the fact that almost everyday, missions come here from Indonesia, Malaysia, Thailand and other developing countries who have heard about the supposed marvelous successes of the industrial relations system under the New Society. They come here to examine our system, to learn

from us and to borrow from our experience what can be selectively transferred or assimilated into their own industrial relations systems. Only recently a mission came to us from Thailand headed by Yena Sacub, the chief adviser of the Prime Minister on Labor relations in his country. Subsequent to that, we attended to a mission from Malaysia, headed by the distinguished Chairman of the Industrial Tribunal of Malaysia, which sought to learn from our experience. Some of our own people in the labor relations field are in fact very much in demand in other developing countries in Asia as advisers of governments under the ILO umbrella on industrial relations.

What is positive and reassuring about our situation in the Philippines is precisely the fact that we have built in this country a modern structure of labor-management relations within the framework of labor laws that rests on the three pillars of trade unions, the employers and government. However, we are too close to our own to be able to appreciate national modernization. In Thailand today, they are just beginning to lay down such infrastructure precisely because it is better especially in times of crises to have fairly strong and responsible trade unions than to deal with individuals. During the revolution that overthrew Kukrit Pramoj, there were strikes all over Bangkok and the government could not mediate because it did not even know whom to talk to. There were no trade unions in the sense that we have trade unions in the Philippines. And so in Thailand today, they are rapidly building up a trade union movement with the inspiration and encouragement of the government.

In Indonesia, President Suharto himself is exerting pressure on multinationals to accept trade unions and to have collective bargaining agreements with them. Part of this is a major political perception of maturing states in our part of the world that if you aim for stability, you can not do away with trade unions.

We now have 2,000 CBAs in the Philippines. But I do not submit that all of these CBAs, even some of those certified by the Bureau of Labor Relations, are models of industrial democracy. It will be interesting to find out by ourselves just what proportion of these 2,000 CBAs are model "sweetheart" agreements.

We also know that sometimes trade unions themselves are utilized in order to perpetuate an unbearable status quo in a business organization. This is one of the issues to which we can address ourselves: how to deal with these distortions of a noble idea, which is, democ-

ratic trade unionism. We also know that sometimes, as part of their strategy and tactics in dealing with unions, management themselves foster unions. Perhaps, historically, we need not be over-critical about it for even in the United States, they begin as a company union. But precisely, the only justification for withholding immediate censure on a company union is when it is progressing into a genuine union. Thus it is distressing when sometimes, certain collective bargaining agreements are renewed year after year with just the scantiest of benefits, as though the function of trade unions was not to help improve conditions but to freeze them at a certain rigid level. There is a price to pay having a great trade union movement by the standards of a developing country.

Med-arbitration cases are more difficult for the administrators of the Labor Ministry than the general run of compulsory arbitration cases because these involve friends in the thick of the fight and we are putting our friendship with them to a high test. There are quite a few cases appealed to the Director of Labor Relations which have found their way to the Supreme Court because they know that in the battle for "markets" — a term often used by economists — trade union leaders feel that their vital interests are directly involved, not only in terms of economic investments that are mustered into the struggle which on occasion can be very considerable, but also because their own reputation before their own peers and community consisting of labor leaders like themselves is put at stake in every contest.

That is the reason why some foreign observers find it strange that our Supreme Court should be cluttered with many representation cases involving trade union conflicts. In most countries, trade union conflicts are not seen to possess, each time, a constitutional dimension that should be litigated in the highest court of the land. I am glad that the rate of reversal of the Bureau of Labor Relations by the Supreme Court seems to be negligible and insignificant. Out of 2,000 cases appealed to the Bureau of Labor Relations, 171 were raised to the Supreme Court and out of these, 73 cases have been decided. The Bureau has been upheld by the Supreme Court throughout except for four or five cases. From the way the Supreme Court jurisprudence is evolving, we can feel a certain temper of the Supreme Court that is inclined towards a more liberal attitude on the right to self-organization but which, at the same time, is very

cognizant of the need for the government and, in particular, the Ministry of Labor, to exercise its authority on behalf of the objectives of the Labor Code.

We must Code address ourselves to the issue of whether or not we should favor more rather than fewer elections. The trade union movement is split on this question. Some trade union leaders feel that we should discourage elections. Indeed it is true that upon the approach of the freedom period, the more imaginative and inventive trade unions go into the renewal of the CBAs.

Whether or not the freedom period can perhaps be nullified in this manner and whether this is an economical or cost-saving approach, must certainly be examined. There are other trade union leaders who hold that the purpose of a freedom period is to give the workers a choice. It is not the freedom period but the liberty to choose that is nullified when, for example, the Bureau of Labor Relations or the Med-Arbiters cooperate in order to frustrate prematurely the building up of a ring of legal defenses around the continuation of the existing status quo correlationships.

The deeper causes of intra-union and inter-union rivalries and conflicts, whether in relation to or independent of restructuring might also be examined. I hope that someday, somebody will try to quantify, on an opportunity-cost basis, how much we lose in terms of the duty to organize the unorganized through this unending empire-designed conflicts of the trade unions in our country. Sometimes the vast sums of money used in order to fight elections are scarce resources available to the trade union which should be spent on organizing the unorganized — instead of being spent on fighting fellow trade unions. That is the reason contemplated by the Labor Code in restructuring. The government therefore has been helping actively, energetically and tirelessly to promote a climate where all the trade unions can get together, stop fighting each other and pull their resources so that they could prove more equal to the patriotic task or organizing the unorganized workers in our country and at the same time maintaining the strength of those who are already organized.

The ideal situation is one where Med-Arbiters would phase themselves out because the Philippine trade union movement has indeed gotten together, established their own form of self-government and their machinery for resolving all of their inter- and intra-

union disputes. In Malaysia, the Malaysian Trade Unions Congress has no inter-union disputes. All their money is either put in cooperatives in order to help workers maintain and optimize the purchasing power of their wages or in organizing those in the outreaches, the plantation workers and those in the remote villages.

In Singapore, the minute you arrive at the airport, you will be welcomed into a so-called comfort taxicab likely to be air-conditioned, owned by drivers under the cooperative system fostered by the Trade Union Congress of Singapore. If you want to buy certain goods you wish to take home at very reasonable prices, you go to a trade union cooperative. If you intend to stay in Singapore and work there you take out a life insurance from the trade union insurance company, another cooperative. Marvelous things happen the minute intra-union and inter-union conflicts begin to disappear. You also see these in Malaysia where workers have a big bank that finances their business through cooperatives.

We can not yet seriously press for the immediate establishment of a workers' bank because there are very few or no cooperatives at all. In effect, the workers' bank is a cooperative bank intended to help the worker by making available to his family goods at prices lower than what are ordinarily available. Where through the support of workers, a cooperative makes some money, the same is returned in the form of patronage refund. Workers therefore participate both ways. But how can we have a genuine and influential workers' cooperative which can even compel the admiration of businesses and industries, such as those that they have in Malaysia and Singapore, unless there is unity first? The money that should go into cooperatives which have the infrastructure of a workers' bank is right now being spent by the unions in fighting each other.

That is what I mean by opportunity-cost. They are lost opportunities because certain practices must continue and we are powerless at the moment to eradicate them. Perhaps, we are not exactly powerless because we are indeed sustaining our brave and heroic efforts to inspire trade unions to unite. In time, there will be no need for a med-arbitration system. We will be happy to turn over the entire med-arbitration function of the Bureau of Labor Relations to the trade unions. Until the time comes, we have to be in a position to resolve issues as they arise between friends in the trade union movement. Some of them are very close friends indeed. We want this

mechanism to be responsive to real needs in accordance with latest developments in our industrial relations law, for in this manner may we establish true industrial democracy that draws its strength and spirit from truly strong and dynamic trade unions.

The Possible Influence of Current Labor Policies and Practices on the Promotion of Industrial Democracy

by Froilan M. Bacungan

This paper looks into the labor policies and practices of the Philippine Government in order to determine their possible influence on the promotion of industrial democracy in the country.

Labor policies embodied in the Constitution

The country's labor policies are embodied in its Constitution. In a Section of the Article of the Constitution entitled "Declaration of Principles and State Policies", it is specifically provided: "The state shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed and regulate the relations between workers and employers. The State shall ensure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration."[1]

The above provision in the Constitution could be considered as explicitly including in the concept of "police power" in the Philippines, the power to enact laws to promote the welfare of the workers. This is of considerable significance in a country where in the initial period of the development of its constitutional law tradition, its Supreme Court, in the exercise of its power of judicial

review, had ruled that a law granting women workers a very modest maternity leave with pay was considered unconstitutional on the ground that it violated the constitutional principle that "No person may be deprived of life, liberty or property without due process."[2] The Supreme Court then viewed the enactment of a maternity leave pay as a law depriving an employer and his employee of the liberty of contract without due process. With a provision in the Constitution categorically commanding the State "to afford protection to labor", the above described kind of constitutional jurisprudence may no longer be promulgated.[3]

Does the above quoted provision of the Constitution have any bearing on the promotion of industrial democracy in the Philippines? At the outset, it does not seem to have any bearing. But a closer scrutiny of the constitutional provision reveals that there are four specific rights of workers guaranteed by the Constitution, i.e. the rights to self-organization, collective bargaining, security of tenure and just and humane conditions of work. It could validly be argued: When the Constitution, among others, guarantees to the workers the rights to self-organization and collective bargaining, it is also guaranteeing two basic institutions so essential to the existence and full development of industrial democracy, i.e. labor organizations which are easily the most effective instruments through which workers may help determine the conditions of their life and work at the workplace and even in society in general; and that of collective bargaining which is *the* process that could integrate so well the participation of workers or at least of their representatives in the determination of the terms and conditions of employment.[4]

Worth noting is the fact that the rights to self-organization and collective bargaining were earlier merely statutory rights.[5] Their elevation to the status of rights expressly provided for in the Constitution ensures that their implementation will never be taken lightly by the legislative, executive and judicial branches of the government.[6]

Labor policies in the Labor Code

After a new Constitution of the Philippines came into full force and effect on 17 January 1973,[7] a decree instituting a Labor Code "Thereby revising and consolidating labor and social laws to afford

protection to labor, promote employment and human resources development and ensure industrial peace based on social justice" was promulgated on 1 May 1974.[8]

As regards labor relations, the Labor Code declares that it is the policy of the State:

> "(a) To promote free collective bargaining, including voluntary arbitration, as a mode of settling labor or industrial disputes;
>
> (b) To promote free trade unionism as an agent of democracy, social justice and development;
>
> (c) To rationalize and restructure the labor movement in order to eradicate inter-union conflicts;
>
> (d) To promote the enlightenment of workers concerning their rights and obligations as union members and as employees;
>
> (e) To provide an adequate administrative machinery for the expeditious settlement of labor or industrial disputes; and
>
> (f) To ensure a stable but dynamic and just industrial peace."[9]

Analyzing the above declaration of policy, and trying to find out if its various aspects have any bearing on industrial democracy, one may be disappointed by the fact that there is no specific reference to industrial democracy. Of course, the promotion of "free collective bargaining" is the first objective mentioned in the declaration of policy. As defined in the Labor Code, collective bargaining could be considered as a mode of industrial democracy at the enterprise level, and even at the industrial level. The Code provides that "the duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment, including proposals for adjusting any grievance or question arising under such agreement and executing a contract incorporating such agreement if requested by either party, but such duty does not compel any party to agree to a proposal or to make any concession."[10]

It should also be further noted that the Labor Code speaks of promoting "free trade unionism as an agent of democracy" in addition to its being an agent of "social justice and development."

Representatives of workers in the formulation and implementation of labor policy

Going beyond its declaration of policy, the Labor Code has several provisions that may be related to the promotion of industrial democracy. There are provisions that indicate a policy to include a voice of the workers in the formulation of labor policy and in its implementation. Thus, the Labor Code provides for a representative of a "workers' organization" in the Overseas Employment Development Board[11] and for a representative of a "national seafarers' organization" in the National Seamen Board.[12] The former Board is mandated by the Code "to undertake a systematic program for overseas employment of Filipino workers, other than seamen,"[13] and the latter Board is "to establish and maintain a comprehensive seamen program."[14]

The Labor Code includes two representatives of national workers organization[15] in the membership of the National Manpower and Youth Council which is the body charged with the formulation of "plans and programs as will ensure efficient allocation, development and utilization of the nation's manpower."[16]

There are four programs providing social security benefits in the Philippines. These programs are each under a separate Commission. The program dealing with work-connected disability or death is under an Employees' Compensation Commission.[17] Those dealing with the hazards of disability, sickness, old age and death (which are not work-connected) for workers in the private employment is under a Social Security Commission.[18] A similar program which, however, is designed for those working in the government, is under a Board of Trustees of Government Service Insurance System.[19] As regards a medical care program, this is under the Philippine Medical Care Commission.[20] Except for the last named Commission, there are representatives of workers in the above mentioned policy-making bodies directly related to social security. However, it should be noted that the Labor Code provides that charter only for the program dealing with work-connected disability or death.[21] A separate law provides the charter for each of the other three programs.[22]