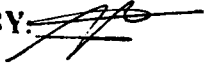


**SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)**



NOV 25 1988

SENATE

RECEIVED BY: 

Senate Bill No. 1221

Introduced by SENATOR JOEL VILLANUEVA

AN ACT RATIONALIZING GOVERNMENT INTERVENTIONS IN LABOR DISPUTES BY ADOPTING THE ESSENTIAL SERVICES CRITERIA IN THE EXERCISE OF THE ASSUMPTION OR CERTIFICATION POWER OF THE SECRETARY OF LABOR AND EMPLOYMENT, AND DECRIMINALIZING VIOLATIONS THEREOF, AMENDING FOR THIS PURPOSE ARTICLES 278[263], 279[264] and 287[272] OF PRESIDENTIAL DECREE 442, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, AS AMENDED AND FOR OTHER PURPOSES

EXPLANATORY NOTE

Articles 278[263], 279[264] and 287[272] of the 1974 Labor Code of the Philippines, as amended, are remnants of Martial Rule, which over the years have been rendered inconsistent with the country's democratic principles and governance, and increasing use of "labor rights' clauses" in trade agreements, multilateral or otherwise.

The country has long departed from strong-arm rule and from fiercely adversarial industrial relations. Article XIII of the 1987 Philippine Constitution promotes the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and enforces mutual compliance to foster industrial peace. The Constitution also guarantees the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law, and regulates the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

Past experiences have shown us of violence in the picket lines due to forceable restraint on workers' right to strike; cases of harassments, abductions and disappearances of unionists; "criminalization" of labor disputes; company closures; mass termination of workers; and high level of distrust in government and in the process due to perception of corruption and bias in labor justice administration as assumption of jurisdiction have been seen as largely for employers who at the same time, are the very first to ignore or resist return-to-work orders through motions for reconsideration and appeal up to the Supreme Court. This is borne by the approximately ten (10) cases of trade union rights violations against the Philippine

government before the International Labour Organization (ILO) and the US Trade Representatives.

State interventions in labor disputes under paragraph (g) of Article 278[263] of the Labor Code, is intrusive and an arbitrary exercise of police power. The Secretary of Labor and Employment is provided with very wide latitude of discretion to prevent an impending strike or lockout or to stop an ongoing strike or lockout by assuming jurisdiction over a labor dispute, which according to his/her own opinion, involve an "industry indispensable to national interest". This overbroad discretion has seen labor disputes in an undergarment factory, match sticks manufacturing, hotdog, chicha-corn and fish sauce factory being assumed as industries indispensable to the national interest.

Under paragraph (g) of Article 278[263], the State restrains the exercise of the right to strike or lockout and direct workers to return to work and the management to accept the striking workers under the same terms and conditions. Defiance of a return to work order or non-compliance with the procedural requirement for the conduct of a strike/lockout is a prohibited act under paragraph (a) of Article 279[264] that may result to loss of employment for union officers who knowingly participate in an illegal strike including any worker who knowingly participate in the commission of illegal acts. Additionally, paragraph (a) of Article 287[272] imposes a fine of not less than P1,000.00 nor more than P10,000.00 and/or imprisonment of not less than 3 months nor more than 3 years, or both fine and imprisonment, at the discretion of the Court, for violation of any of the provisions of Article 264. Both the ILO and the US Trade Representatives have observed of disproportionate penalty of loss of employment, fine and imprisonment for administrative non-compliance with respect to the procedures laid down for notices of strike and on cooling-off periods, which would make the strike illegal.

Beginning July 2010, the Department of Labor and Employment implemented clear procedures and criteria for the exercise of the Secretary's assumption of jurisdiction power through a tripartite-supported department orders (Department Order No. 40-G-10, Series of 2010 and Department Order No. 40-H-13, Series of 2013). The "indispensable to the national interest" criteria for assumption of jurisdiction to issue was aligned with the ILO criteria of "essential services" and the Constitutional mandate to use voluntary modes in dispute settlement through conciliation-mediation was expansively used and the institution of collective bargaining was strengthened. This has resulted in annual single digit actual strikes from July 2010 to June 2016 ushering relative industrial peace in the workplaces. According to the National Conciliation and Mediation Board (NCMB) from July 2010 to June 2016, there were 20 actual strikes, 22 assumed cases and 43 certified to the NLRC while the July 2004 to June 2010 labor relations data showed 69 actual strikes, 140 assumed cases and 145 certified to the NLRC for compulsory arbitration.

Thus, the proposed bill seeks to amend Article 278[263], 279[264] and 287[272] of the Labor Code to rationalize government interventions in labor disputes by: (a) adopting the essential services criteria, meaning functions or services which if interrupted would endanger the life, personal safety or health of whole or part of the population, in the exercise of the assumption or certification power of the Secretary of Labor and Employment, (b) providing clear conditions in its exercise, (c) requiring

minimum service or operation in case an assumption order will issue, (d) decriminalize non-compliance with the procedural requirements in the exercise of the right to strike, (e) providing fines for violation by employer, labor organization, or corporation, and (f) providing a procedure for prosecution of criminal acts committed during a strike or lockout.

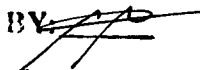
In view of the foregoing, the passage of this bill is earnestly sought.


SENATOR JOEL VILLANUEVA

**SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)**

16 OCT 25 AM 11:48

SENATE

RECEIVED BY 

Senate Bill No. 1221

Introduced by SENATOR JOEL VILLANUEVA

**AN ACT RATIONALIZING GOVERNMENT INTERVENTIONS IN
LABOR DISPUTES BY ADOPTING THE ESSENTIAL SERVICES
CRITERIA IN THE EXERCISE OF THE ASSUMPTION OR
CERTIFICATION POWER OF THE SECRETARY OF LABOR AND
EMPLOYMENT, AND DECRIMINALIZING VIOLATIONS THEREOF,
AMENDING FOR THIS PURPOSE ARTICLES 278[263], 279[264] and
287[272] OF PRESIDENTIAL DECREE 442, OTHERWISE KNOWN AS
THE LABOR CODE OF THE PHILIPPINES, AS AMENDED AND FOR
OTHER PURPOSES**

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

1 **Section 1.** Article 278 [263] of the Labor Code is hereby amended to read as
2 follows:

3 **“Article 278 [263]. Strikes, picketing and lockouts. –**

- 4 a) It is the policy of the State to encourage free trade unionism and free
5 collecting bargaining.
6
7 b) Workers shall have the right to engage in concerted activities for purposes of
8 collective bargaining or for their mutual benefit and protection. The right of
9 legitimate labor organizations to strike and picket and of employers to lockout
10 [, consistent with the national interest,] shall continue to be recognized and
11 respected. However, no labor union may strike and no employer may declare
12 a lockout on grounds involving inter-union and intra-union disputes.
13
14 c) In case of bargaining deadlocks, the duly certified or recognized bargaining
15 agent may file a notice of strike or the employer may file a notice of lockout
16 with the [Ministry] **DEPARTMENT OF LABOR AND EMPLOYMENT** at least
17 30 days before the intended date thereof. In cases of unfair labor practice, the
18 period of notice shall be 15 days and in the absence of a duly certified or
19 recognized bargaining agent, the notice of strike may be filed by any
20 legitimate labor organization in behalf of its members. However, in case of

1 dismissal from employment of union officers duly elected in accordance with
2 the union constitution and by-laws, which may constitute union busting where
3 the existence of the union is threatened, the 15 day cooling-off period shall
4 not apply and the union may take action immediately.
5

6 d) The notice must be in accordance with such implementing rules and
7 regulations as the [Minister] **SECRETARY** of Labor and Employment may
8 promulgate.
9

10 e) During the cooling-off period, it shall be the duty of the [Ministry]
11 **DEPARTMENT OF LABOR AND EMPLOYMENT** to exert all efforts at the
12 mediation and conciliation to effect a voluntary settlement. Should the dispute
13 remain unsettled until the lapse of the requisite number of days from the
14 mandatory filing of notice, the labor union may strike or the employer may
15 declare a lockout.
16

17 f) A decision to declare a strike must be approved by a majority of the total
18 union membership in the bargaining unit concerned, obtained by secret ballot
19 in meetings or referenda called for that purpose. A decision to declare a
20 lockout must be approved by a majority of the board of directors of the
21 corporation or association or of the partners in a partnership obtained by
22 secret ballot in a meeting called for that purpose. The decision shall be valid
23 for the duration of the dispute based on substantially the same grounds
24 considered when the strike or lockout vote was taken. The [Ministry]
25 **DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE)** may its own
26 initiative or upon the request of any affected party, supervise the conduct of
27 the secret balloting. In every case, the union or the employer shall furnish the
28 [Ministry] **DOLE** the results of the voting at least seven days before the
29 intended strike or lockout, subject to the cooling-off period herein provided.
30

31 g) When [in his opinion] there exists a labor dispute causing or likely to cause
32 strike or lockout in an industry [indispensable to the national interest,]
33 **ENGAGED IN ESSENTIAL SERVICES, THE SECRETARY OF LABOR AND**
34 **EMPLOYMENT MAY ASSUME JURISDICTION OVER THE DISPUTE**
35 **PROVIDED, THAT ANY OF THE FOLLOWING CONDITIONS IS PRESENT:**
36

37 1. **BOTH PARTIES HAVE REQUESTED THE SECRETARY OF LABOR**
38 **AND EMPLOYMENT TO ASSUME JURISDICTION OVER THE**
39 **LABOR DISPUTE; OR**
40

41 2. **UPON REQUEST OR PETITION BY EITHER PARTY, OR *MOTU***
42 ***PROPRIO* ON THE PART OF THE SECRETARY OF LABOR AND**
43 **EMPLOYMENT PROVIDED THAT A CONFERENCE CALLED BY**
44 **THE OFFICE OF THE SECRETARY ON THE PROPRIETY OF ITS**
45 **ISSUANCE HAS BEEN CONDUCTED.**
46

47 **IN SUCH CASE, THE SECRETARY OF LABOR AND EMPLOYMENT MAY**
48 **DECIDE OR CERTIFY THE LABOR DISPUTE TO THE NATIONAL LABOR**

1 RELATIONS COMMISSION FOR COMPULSORY ARBITRATION, OR TO A
2 VOLUNTARY ARBITRATOR OR PANEL OF VOLUNTARY ARBITRATORS.
3

4 SAID ASSUMPTION SHALL HAVE THE EFFECT OF AUTOMATICALLY
5 ENJOINING AN IMPENDING STRIKE OR LOCKOUT. IF A
6 STRIKE/LOCKOUT HAS ALREADY TAKEN PLACE AT THE TIME OF
7 ASSUMPTION, ALL STRIKING OR LOCKED OUT EMPLOYEES AND
8 OTHER EMPLOYEES SUBJECT OF THE NOTICE OF STRIKE OR
9 LOCKOUT SHALL IMMEDIATELY RETURN TO WORK AND THE
10 EMPLOYER SHALL IMMEDIATELY RESUME OPERATIONS AND
11 READMIT ALL EMPLOYEES UNDER THE SAME TERMS AND
12 CONDITIONS PREVAILING BEFORE THE STRIKE OR LOCKOUT.

13 ESSENTIAL SERVICES REFER TO FUNCTIONS OR SERVICES
14 RENDERED BY AN ESTABLISHMENT, WHICH IF INTERRUPTED, WOULD
15 ENDANGER THE LIFE, PERSONAL SAFETY OR HEALTH OF WHOLE OR
16 PART OF THE POPULATION. FOR THIS PURPOSE, THE SECRETARY OF
17 LABOR AND EMPLOYMENT, BY APPROPRIATE REGULATIONS, SHALL
18 DETERMINE THE INDUSTRIES ENGAGED IN ESSENTIAL SERVICES
19 AFTER CONSULTATIONS WITH THE NATIONAL TRIPARTITE
20 INDUSTRIAL PEACE COUNCIL.

21 IN LABOR DISPUTES AFFECTING INDUSTRIES ENGAGED IN
22 ESSENTIAL SERVICES, IT SHALL BE THE DUTY OF THE UNION AND
23 EMPLOYER TO PROVIDE AND MAINTAIN THE OPERATION OR
24 DELIVERY OF SERVICES. IN CASE OF HOSPITALS, CLINICS OR
25 MEDICAL INSTITUTIONS, THE UNION AND EMPLOYER SHALL PROVIDE
26 AND MAINTAIN AN EFFECTIVE AND FUNCTIONAL WORKFORCE,
27 WHOSE MOVEMENT AND SERVICES SHALL BE UNHAMPERED AND
28 UNRESTRICTED, AS ARE NECESSARY TO ENSURE THE PROPER AND
29 ADEQUATE PROTECTION OF THE LIFE, PERSONAL SAFETY AND
30 HEALTH OF THEIR PATIENTS, MOST ESPECIALLY EMERGENCY
31 CASES, FOR THE DURATION OF THE LABOR DISPUTE.

32 h) WITHIN FIVE (5) DAYS FROM THE ISSUANCE OF THE ASSUMPTION OR
33 CERTIFICATION ORDER, A PRELIMINARY CONFERENCE OR HEARING
34 SHALL IMMEDIATELY BE CONDUCTED BY THE OFFICE OF THE
35 SECRETARY OF LABOR AND EMPLOYMENT, THE NATIONAL LABOR
36 RELATIONS COMMISSION, OR THE VOLUNTARY ARBITRATOR OR
37 PANEL OF VOLUNTARY ARBITRATORS AS THE CASE MAY BE.
38

39 i) IN CASE OF ACTUAL OR IMPENDING STRIKE OR LOCKOUT IN
40 INDUSTRIES THAT ARE NOT ENGAGED IN ESSENTIAL SERVICES, THE
41 SECRETARY OF LABOR AND EMPLOYMENT MAY ASSUME
42 JURISDICTION UPON JOINT REQUEST OF BOTH PARTIES IN THE
43 LABOR DISPUTE AFTER EXHAUSTION OF MANDATORY CONCILIATION.
44 EITHER OR BOTH PARTIES MAY ALSO OPT TO SUBMIT TO
45 COMPULSORY OR VOLUNTARY ARBITRATION.
46

- 1 j) The foregoing notwithstanding, the President of the Philippines shall not be
2 precluded from determining industries that ARE ENGAGED IN ESSENTIAL
3 SERVICES and from intervening at any time and assuming jurisdiction over
4 any labor dispute in order to settle or terminate the same DURING SEVERE
5 NATIONAL EMERGENCIES.

6
7
8 **Section 2.** Article 279 [264] of the Labor Code is hereby amended to read as
9 follows:

10 **"Article 279 [264]. Prohibited Activities.-**

- 11 a) No labor organization or employer shall declare a strike or lockout without
12 first having bargained collectively in accordance with Title VII of this Book
13 or without first having filed the notice required in the preceding Article
14 or without the necessary strike or lockout vote first having been obtained
15 and reported to the Department OF LABOR AND EMPLOYMENT.

16
17 No strike or lockout shall be declared after assumption of jurisdiction
18 by the President or the Secretary or after certification or submission of the
19 dispute to compulsory or voluntary arbitration or during the pendency of
20 cases involving the same grounds for the strike or lockout.

- 21
22 b) Any worker whose employment has been terminated as a consequence
23 of an [unlawful] ILLEGAL lockout shall be entitled to reinstatement with full
24 back wages.

25
26 Mere participation of a worker OR UNION OFFICER in a [lawful] strike
27 DECLARED ILLEGAL FOR FAILURE OF THE UNION TO COMPLY
28 WITH PROCEDURAL REQUIREMENTS UNDER PARAGRAPH (A) OF
29 THIS ARTICLE, shall not [constitute sufficient] BE A ground for termination
30 of his OR HER employment, even if a replacement had been hired by the
31 employer during such [lawful] ILLEGAL strike.

- 32
33 c) No person shall obstruct, impede, or interfere with, by force, violence,
34 coercion, threats or intimidation, any peaceful CONCERTED ACTION
35 INCLUDING picketing by employees during any labor controversy or in the
36 exercise of the right of self-organization or collective bargaining, or shall aid
37 or abet such obstruction or interference.

38
39 Any WORKER OR union officer who knowingly participates [in an illegal
40 strike and any worker or union officer who knowingly participates] in the
41 commission of [illegal] UNLAWFUL acts during a strike may be declared to
42 have lost his/her employment AFTER DUE PROCESS.

- 43
44 d) No employer shall use or employ any strike-breaker, nor shall any person be
45 employed as a strike-breaker.

1 e) No person engaged in picketing shall commit any act of violence, coercion
2 or intimidation or obstruct the free ingress to or egress from the employer's
3 premises for lawful purposes, or obstruct public thoroughfares.
4

5 f) NO PUBLIC OFFICIAL OR EMPLOYEE, INCLUDING OFFICERS AND
6 PERSONNEL OF THE ARMED FORCES OF THE PHILIPPINES OR THE
7 PHILIPPINE NATIONAL POLICE, OR ARMED PERSON, PRIVATE
8 SECURITY GUARDS AND SIMILAR PERSONNEL IN THE PRIVATE
9 SECURITY AGENCY SHALL INTRODUCE OR ESCORT IN ANY MANNER
10 REPLACEMENT WORKERS. THE POLICE FORCE SHALL KEEP OUT
11 OF THE PICKET LINES UNLESS ACTUAL VIOLENCE OR OTHER
12 CRIMINAL ACTS OCCUR THEREIN.
13

14 HOWEVER, THE SECRETARY OF LABOR AND EMPLOYMENT OR THE
15 NATIONAL LABOR RELATIONS COMMISSION MAY SEEK THE
16 ASSISTANCE OF LAW ENFORCEMENT AGENCIES TO MAINTAIN
17 PEACE AND ORDER, PROTECT LIFE AND PROPERTY, AND/OR
18 ENFORCE THE LAW AND LEGAL ORDER.
19
20

21 **Section 3.** Article 287 [272] of the Labor Code is hereby amended to read as
22 follows:
23

24 **"Article 287 [272]. [Penalties] FINES.**

25
26 a) Any person, **EMPLOYER, LABOR ORGANIZATION OR CORPORATION**
27 **FOUND** violating Article 264 of this Code shall be [punished by a] **FINED**
28 [ef] not less than [one thousand pesos (P1,000.00)] **TEN THOUSAND**
29 **PESOS (P10,000.00)** nor more than [ten thousand pesos (P10,000.00)]
30 **ONE HUNDRED THOUSAND PESOS (P100,000.00)** [and/or imprisonment
31 for not less than three months nor more than three (3) years, or both
32 such fine and imprisonment,] at the discretion of the [court]
33 **NATIONAL LABOR RELATION COMMISSION.** [Prosecution under this
34 provision shall preclude prosecution for the same act under the Revised Penal
35 Code, and vice versa.]
36

37 b) Upon the recommendation of the Secretary of Labor and Employment and the
38 Secretary of National Defense, foreigners who violate the provisions of this
39 Title shall be subject to immediate and summary deportation by the
40 [Commission on] **BUREAU OF Immigration [and Deportation]** shall be
41 permanently barred from reentering the country without the special permission
42 of the President of the Philippines."
43

44 c) **THE REGULAR COURTS SHALL HAVE JURISDICTION OVER ANY**
45 **CRIMINAL ACTION ARISING FROM VIOLATION OF ANY OF THE**
46 **PROVISIONS OF ART. 264 OF THE LABOR CODE, AS AMENDED, BUT**
47 **SUBJECT TO THE REQUIRED CLEARANCE FROM THE DOLE ON CASES**
48 **ARISING OUT OF OR RELATED TO A LABOR DISPUTE.**
49

1 NO CRIMINAL PROSECUTION UNDER ARTICLE 264 MAY BE
2 INSTITUTED WITHOUT A FINAL JUDGMENT THAT AN ILLEGAL STRIKE
3 OR LOCKOUT HAS BEEN COMMITTED. THE PRESCRIPTIVE PERIOD OF
4 THE CRIMINAL OFFENSE SHALL BE CONSIDERED INTERRUPTED
5 DURING THE PENDENCY OF ADMINISTRATIVE PROCEEDINGS:
6 PROVIDED, HOWEVER, THAT THE FINAL JUDGMENT IN THE SAID
7 PROCEEDINGS SHALL NOT BE BINDING IN THE CRIMINAL CASE NOR
8 AN EVIDENCE OF GUILT.
9

- 10 d) COMPLAINTS ON ACTS OR OMISSIONS OF PNP OR AFP PERSONNEL
11 IN VIOLATION OF ARTICLE 264 OF THE LABOR CODE, AS AMENDED,
12 SHALL BE FILED WITH THEIR RESPECTIVE AGENCY WITHOUT
13 PREJUDICE TO THE FILING OF THE APPROPRIATE CASES BEFORE
14 THE OMBUDSMAN.
15
16

17 **Section 4. Implementing Rules and Regulations.** - The Secretary of Labor and
18 Employment shall promulgate the necessary rules and regulations to implement the
19 provisions of this Act.
20

21 **Section 5. Separability Clause.** - If any part or provision of this Act is declared
22 unconstitutional or invalid, the remainder of this Act or the provisions not otherwise
23 affected shall remain valid and subsisting.
24

25 **Section 6. Repealing Clause.** - All laws, presidential decrees, proclamations,
26 executive orders, issuances, rules and regulations, or any part thereof,
27 inconsistent with the provisions of this Act are hereby repealed, amended or
28 modified accordingly.
29

30 **Section 7. Effectivity.** - This Act shall take effect fifteen (15) days after its complete
31 publication in the official gazette or in at least two (2) newspapers of national
32 circulation.
33

34 Approved,
35
36
37