

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

'04 JUL -7 P1:27

SENATE
S. B. No. 1406

RECEIVED BY: _____

Introduced by Senator Pangilinan

EXPLANATORY NOTE

The 1987 Philippine Constitution recognizes the rights of the workers to self- organization and to collective bargaining (Article XIII, Sec. 3), rights that are likewise recognized internationally as basic human rights. However, these rights to self- organization and collective bargaining become are rendered futile because of the litigious nature of labor organization in the Philippines.

To ensure that these rights shall be enjoyed by the worker and respected by all, Article 239, 256 and 257 of P.D. 442 (the Labor Code of the Philippines) are amended by this proposal for the purpose of:

1. **Doing away with the provision on cancellation of a union's registration but instead penalizing erring union officers and/or members with dismissal on the basis of the same grounds enumerated in Art. 239 so as not to unduly penalize the union and its entire membership.**

Article 239 of the Labor Code provides that the union registration may be cancelled if the union makes misrepresentations and false statements, fails to submit documents, engages in the "cabo" system. Enters into a collective bargaining agreement which provides terms and conditions of employment below minimum standards established by laws, asks or accepts attorney's fees or negotiation fees from employers, checks off special assessment or other fees without the written authorization of the members, fails to submit the list of individual member of the union, and fails to comply with the requirements under article 237 and 238. However, such rule imposes a form of union officers and members directly responsible for the infraction. Hence. There is a need to amend Article 239 of the labor Code in order not to unduly punish the union and the entire membership.

2. **Allowing both the rank-and -file collective bargaining unit and the separate collective bargaining unit of supervisors to join the same federation or national union.**

In order to strengthen the whole labor sector and prevent the tendency for splitting unions into micro formations, the establishment of industry- wide unions should be encouraged. Workers should not confine themselves to the problem of their own bargaining unit, but should also be aware of the problems of the entire enterprise and of the entire industry.

In developed countries, unions are members of national federations or national unions representing hundreds of thousands, even millions of workers.

In our country, there are a countless number of federations and national unions with very limited membership. Thus, the quality of advocacy and administration suffers a great deal. Also, fly-by-night unions keep on proliferating, and the Department of Labor and Employment ("DOLE") has not enough personnel to monitor all of them.

Thus, it is necessary to amend the law so as to expressly allow the rank-and-file union and the supervisory union in a particular firm to join the same federation.

3. Mandating the Med- Arbiter to automatically order a certification election where a verified petition questioning the majority status of the incumbent bargaining agent is filed by a national union, a federation, or a local or chapter which has been issued a charter certificate by the national union or federation.
4. Mandating the conduct of a certification election in an unorganized establishment where there is no certified bargaining agent upon the filing of petition for certification election by a legitimate labor organization including a national union or federation, or local or chapter which has been issued a charter certificate by the national union or federation.

A simple petition for certification election for the choice of the bargaining agent, which under the law is not even a litigation but a proceeding of a fact-finding and is summary in nature, takes years to resolve and can even be reach the Supreme Court.

Prior to the decision of the Supreme Court in the case of *Progressive Development Corporation of the Philippines v. Secretary of Labor and Employment* (205 SCRA 802), the petition for certification election shall prosper if the same is filed by a national union or federation, or a local of chapter which has been issued a charter certificate by the national union or federation. No further requirement is needed.

The present requirement for a local or chapter to submit the constitution and by laws, books of accounts, and lists of officers- as enunciated in the *Progressive* case presents an onerous burden on the part of the union. While they can be easily complied with, the fact that the same are required makes it possible for the employer, and even for an undesirable competing union, to interpose trivial, even nonsensical, objections anchored on such requirements, against the granting of the petition. Thus, it becomes easy to delay a petition for certification election for go up to more than one year.

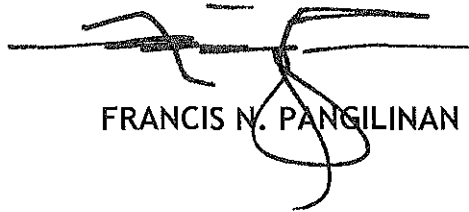
Since the national union or the federation has a legal personality by virtue of the certificate of registration issued by the DOLE, the petition for certification election should be granted if the same is filed by the national union or the federation, or if the same is filed by a chapter or local which has been issued a charter by the national union or a federation.

5. Further hastening the certificate election proceedings.

Article 245 is amended and a new provision is added to disallow a petition for cancellation as a ground for suspending the proceedings for certification election or for the same to become a bar for the filing of a petition for certification election.

All these proposed amendments to the labor Code represent a great step toward realizing the rights due our workers.

In view of the foregoing, approval of this bill is earnestly requested.



FRANCIS N. PANGILINAN

THIRTEENTH CONGRESS OF THE REPUBLIC)
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'04 JUL -7 P1:26

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SENATE
S. B. No. 1406

Introduced by Senator Pangilinan

**AN ACT STRENGTHENING THE WORKERS' CONSTITUTIONAL RIGHT TO
SELF- ORGANIZATION**

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

SECTION 1. Article 239 of Presidential Decree No. 442, as amended,
otherwise known as the Labor Code of the Philippines ("Labor Code"), is hereby
amended to read as follows:

"Art. 239. GROUNDS FOR [CANCELLATION OF UNION
REGISTRATION. The following shall constitute grounds for cancellation of union
registration] **DISMISSAL AS UNION OFFICERS AND/OR MEMBERS UPON
PETITION BY A MEMBERS, UNION OFFICERS AND/OR MEMBERS MAY BE
DISMISSED FROM THE UNION FOR THEIR DIRECT CULPABILITY FOR ANY OF
THE FOLLOWING ACTS:**

x x x"

SEC. 2 A new provision is hereby inserted into the Labor Code as Article
239-A:

"**ART. 239-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.**"

SECTION 3. Article 245 of the Labor Code as amended, is hereby further
amended as follows:

"Art. 245. (A) **EFFECT OF INCLUSION AS A MEMBER OF EMPLOYEES
OUTSIDE THE BARGAINING UNIT - THE INCLUSION AS UNION MEMBERS OF
EMPLOYEES OUTSIDE THE BARGAINING UNIT SHALL NOT BE A GROUND FOR
THE CANCELLATION OF THE REGISTRATION OF THE UNION. SAID EMPLOYEES
ARE AUTOMATICALLY DEEMED REMOVED FROM THE LIST OF MEMBERSHIP OF
SUCH UNION.**

(B) **INELIGIBILITY OF MANAGERIAL EMPLOYEES TO JOIN ANY LABOR
ORGANIZATION, RIGHT OF SUPERVISORY EMPLOYEES. - Managerial employees
are not eligible to join, assist or form any labor organization. Supervisory**

employees shall not be eligible for membership in [a labor organization] **THE COLLECTIVE BARGAINING UNIT** of the rank-and-file employees but may join, assist or form A separate [labor organization] **COLLECTIVE BARGAINING UNIT** of their own. **THE RANK -AND- FILE UNION AND THE SUPERVISORY UNION MAY JOIN THE SAME FEDERATION OR NATIONAL UNION."**

SECTION 4. Article 256 of the Labor Code is hereby further amended to read as follows:

"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 A NATIONAL UNION, A FEDERATION, OR A LOCAL OR CHAPTER WHICH HAVE BEEN ISSUED A CHARTER CERTIFICATE BY THE NATIONAL UNION OR FEDERATION** before the Department of Labor and Employment within the sixty-day period before the expiration of a collective bargaining agreement, the Med Arbiter shall automatically order an election 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 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 per cent (50%) of the number of votes cast.

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"

SECTION 5. Article 257 of the Labor Code, as amended, is hereby further amended to read as follows:

"Art. 257. **PETITION 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 a legitimate labor organization[.], **INCLUDING A NATIONAL UNION, A FEDERATION OR A LOCAL OR CHAPTER WHICH HAS BEEN ISSUED A CHARTER CERTIFICATE BY THE NATIONAL UNION OR FEDERATION."**

SECTION 6. Repealing Clause. -P.D. 442, as amended, otherwise known as the Labor Code of the Philippines, and all other acts, laws, rules, presidential issuance, rules and regulations are repealed, modified, or amended accordingly.

SECTION 7. Separability Clause. - If any part, section, or provision of this Act shall be held invalid or unconstitutional, the other provisions shall not be affected thereby.

SECTION 8. Effectivity. - This Act shall take effect fifteen (15) days upon publication in at least two (2) newspapers of national circulation.

Approved,