

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



SENATE  
Office of the Secretary

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SENATE  
S. No. 1913

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Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The Presidential Decree No. 442, also known as the Labor Code, Article 248, makes it an unfair labor practice for employees "to contract out services or functions being performed by union members..." Clearly, the provision does not cover situations where employers merely threaten to contract out services being performed by the latter. A threat has the same coercive effect as actually contracting out services as it instills fear in the laborer of losing his job.

This bill extends the protection of Article 248 by making it unlawful for employers to threaten to contract out services being performed by union members.\*

*ass.*  
*Miriam Defensor Santiago*  
MIRIAM DEFENSOR SANTIAGO

\* This bill was originally filed during the Thirteenth Congress, First Regular Session.

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1 AN ACT  
2 AMENDING PRESIDENTIAL DECREE NO. 442, ALSO KNOWN  
3 AS THE LABOR CODE OF THE PHILIPPINES, ARTICLE 248, MAKING IT UNLAWFUL  
4 FOR EMPLOYERS TO THREATEN TO CONTRACT OUT SERVICES  
5 BEING PERFORMED BY UNION MEMBERS

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

6 SECTION 1. P.D. No. 442, also known as the Labor Code of the Philippines, Article  
7 248, is hereby amended to read as follows:

8 "Article 248. Unfair labor practices of employers. – It shall be unlawful  
9 for an employer to commit any of the following unfair labor practice:

10 (a) To interfere with, restrain or coerce employees in the exercise of their  
11 right to self-organization;

12 (b) To require as a condition of employment that a person or an employee  
13 shall not join a labor organization or shall with-draw from one to which he  
14 belongs;

15 (c) [To contract out services or functions being performed by union  
16 members when such will interfere with, restrain or coerce employees in the  
17 exercise of their rights to self-organization;] **TO PROMISE, TO THREATEN,  
18 OR TO TAKE ANY OTHER ACTION TO HIRE A PERMANENT  
19 REPLACEMENT OR AN EMPLOYEE WHO**

20 **(A) AT THE COMMENCEMENT OF A LABOR DISPUTE WAS**  
21 **AN EMPLOYEE OF THE EMPLOYER IN A BARGAINING**  
22 **UNIT WHICH A LABOR ORGANIZATION (1) WAS THE**  
23 **CERTIFIED OR RECOGNIZED EXCLUSIVE BARGAINING**

1           **REPRESENTATIVE; OR (2) AT LEAST THIRTY (30) DAYS**  
2           **PRIOR TO THE COMMENCEMENT OF THE DISPUTE HAD**  
3           **FILED A PETITION FOR CERTIFICATION ELECTION**  
4           **PURSUANT TO ARTICLES 256 AND 257 OF THIS CODE,**  
5           **AND THE BUREAU OF LABOR RELATIONS HAS NOT**  
6           **COMPLETED THE REPRESENTATION PROCEEDING; AND**  
7           **(B) IN CONNECTION WITH THAT DISPUTE HAS ENGAGED IN**  
8           **CONCERTED ACTIVITIES FOR THE PURPOSE OF**  
9           **COLLECTIVE BARGAINING OR OTHER MUTUAL AID OR**  
10           **PROTECTION OR DENY ANY OTHER EMPLOYMENT**  
11           **RIGHT OR PRIVILEGE TO AN EMPLOYEE WHO IS**  
12           **WORKING FOR OR HAS UNCONDITIONALLY OFFERED**  
13           **TO RETURN TO WORK FOR THE EMPLOYER, OUT OF A**  
14           **PREFERENCE FOR ANY OTHER INDIVIDUAL, THAT IS**  
15           **BASED ON THE FACT THAT THE INDIVIDUAL IS**  
16           **PERFORMING, HAS PERFORMED, OR HAS INDICATED A**  
17           **WILLINGNESS TO PERFORM BARGAINING UNIT WORK**  
18           **FOR THE EMPLOYER DURING THE LABOR DISPUTE.**

19           (d) To initiate, dominate, assist or otherwise interfere with the formation  
20           or administration of any labor organization, including the giving of financial or  
21           other support to it or its organizers or supporters;

22           (e) To discriminate in regard to wages, hours of work and other terms and  
23           conditions of employment in order to encourage or discourage membership in any  
24           labor organization. Nothing in this Code or in any other law shall stop the parties  
25           from requiring membership in a recognized collective bargaining agent as a  
26           condition for employment, except those employees who are already members of  
27           another union at the time of the signing of the collective bargaining agreement.  
28           Employees of an appropriate bargaining unit who are not members of the  
29           recognized collective bargaining agent may be assessed a reasonable fee

1 equivalent to the dues and other fees paid by members of the recognized  
2 collective bargaining agent, if such non-union members accept the benefits under  
3 the collective bargaining agreement: Provided, that the individual authorization  
4 required under Article 242, paragraph (o) of this Code shall not apply to the non-  
5 members of the recognized collective bargaining agent;

6 (f) To dismiss, discharge or otherwise prejudice or discriminate against an  
7 employee for having given or being about to give testimony under this Code;

8 (g) To violate the duty to bargain collectively as prescribed by this Code;

9 (h) To pay negotiation or attorney's fees to the union or its officers or  
10 agents as part of the settlement of any issue in collective bargaining or any other  
11 dispute; or

12 (i) To violate a collective bargaining agreement.

13 The provisions of the preceding paragraph notwithstanding, only the  
14 officers and agents of corporations, associations or partnerships who have actually  
15 participated in, authorized or ratified unfair labor practices shall be held  
16 criminally liable.”

17 SECTION 2. *Separability Clause.* – If any provision or part hereof is held invalid or  
18 unconstitutional, the remainder of the law or the provision not otherwise affected shall remain  
19 valid and subsisting.

20 SECTION 3. *Repealing Clause.* – Any law, presidential decree or issuance, executive  
21 order, letter of instruction, administrative order, rule, or regulation contrary to or inconsistent  
22 with the provisions of this Act is hereby repealed, modified, or amended accordingly.

23 SECTION 4. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its  
24 publication in at least two (2) newspapers of general circulation.

Approved,