The Labor Market and Industrial Relations Environment: Policy Issues and Options in a Global Economy*

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ABSTRACT

This paper aims to provoke discussions on the policy changes that should be adopted to align the Philippine labor administration with the new economic system. It focuses on the Labor Code as the main source of labor policies in the Philippines, and offers an analysis on the effectiveness of the Labor Code and its relevance to the global economy. It tackles specific issues such as employment relations, security of tenure, minimum wage fixing, freedom of association, collective bargaining, outsourcing, assumption of jurisdiction and the eight-hour labor law. Options are raised by the author to make the Labor Code more responsive to the new economic system.

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INTRODUCTION

With the advent of globalization, employers in the Philippines were forced to reorient their operations to address the new system of doing business. As a consequence of globalization and re-engineering of operations, many workers, particularly those in the formal sector whose employment had traditionally been protected by law and by trade unions found their standard of living adversely affected. Concepts such as security of tenure, protection to workers, etc. had been put on issue as they are constantly challenged as rigidities that hamper the efforts of employers to achieve competitiveness and to provide employment to Filipino workers.

While they used to be looked upon as protectors of the less fortunate workers, trade unions had suddenly found their role in society and in business in general, anathema to a global economy. Trade unions have increasingly been accused of causing the rigidities that strain employers' efforts to keep their companies afloat and to provide employment.

The workers on the other side, point to the employer as the alleged culprit in the increasing adverse conditions that the former are now experiencing. They cite employers' strategies such as re-engineering of operations and the implementation of flexible employment relations as anti-labor and anti-union.

But is this finger pointing really necessary? As both workers and employers are affected adversely by this global phenomenon, should they continue looking at each other as adversaries or can they work together as a team? These are some of the issues that had been bothering us for the past decades since the implementation of structural adjustment in 1987.

THE PHILIPPINE ECONOMIC DEVELOPMENT STRATEGY AND THE LABOR CODE

When we discuss the labor market and industrial relations environment at the policy level, we cannot ignore the Labor Code because it is a social legislation aimed at protecting the workers and improving their standard of living. It is also an instrument of economic development. As then Secretary Blas F. Ople put it,

"while the Labor Code is a charter of human rights and obligation,"[1] "it must also be both responsive and responsible for development, for a nation must develop together or not at all."[2]

Economic development involves two phases. The first focuses on increasing the economic pie and the second on how such increase in economic pie can be equitably distributed. Under the import substitution regime, the Labor Code was in harmony with these two objectives. The objectives helped enlarge the economic pie by creating demands in the domestic market that was necessary to support import-substituting industries. It also addressed the second activity under the banner of "social justice."[3] During the import substitution regime, the thrust was to improve the standard of living of the workers that was expected in turn to improve their purchasing ability. This was necessary to create demands in the domestic market where our industries then were dependent for their revenue.

The other important aspect of the import substitution regime was that the Labor Code was the instrument that created labor administration system in the country. A system of labor administration was necessary to stabilize employer-employee relations so that our import-substituting industries can move forward.

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[1] Ople, B. F. (1979) "Social Conscience of the World" in *Frontiers of Labor and Social Policy*, Ministry of Labor and Employment, Institute of Labor and Manpower Studies, Manila, Philippines, p. 43.

[2] Ibid., p. 219.

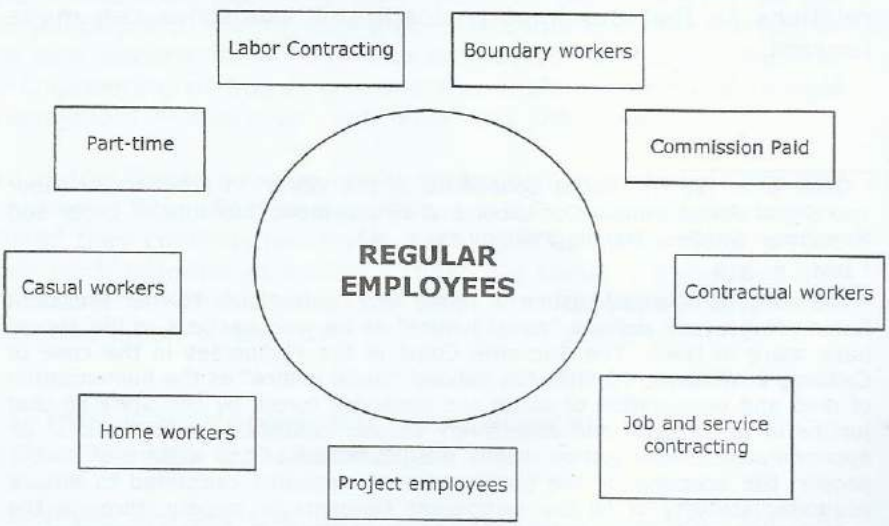
[3] The concept of social justice is vague and contentious. Former President Ramon Magsaysay defined "social justice" as he who has less in life should have more in law." The Supreme Court of the Philippines in the case of Calalang v. Williams, 70 Phil. 726 defined "social justice" as the humanization of laws and equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the government of measures calculated to ensure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*. For the international debate on the meaning of "social justice' see for example Boucher, D. and P. Kelly (eds.) (1998) *Social Justice from Humes to Waltzer*, Routledge, London.

Labor administration system is a subsystem and must be attuned to the larger economic system. During the import substitution regime, the labor administration system that was created by the Labor Code complimented the objectives of the then existing economic regime. But like any man-made structure, the labor administration we now have is not a perfect system. In fact it has been flawed from the very beginning.

In the Philippines, we have a Labor Law focused on protecting the smaller segment of the workforce in the formal sector. Nonetheless, we consoled ourselves with the thought that as "economic development deepens, most of our workers will eventually end up with the formal sector of our economy", an assumption that now appeared premature as this was reversed when globalization was introduced.

The employment relation as prescribed by the Code is summarized in Figure 1. Note that it is centered on the regular employees as the defining element of employment relations. All other types of employment relations are perceived as atypical arrangements.

Figure 1. Employment Relations Under the Labor Code[4]



[4] This figure was originally presented to ILO in the paper entitled *The Philippines: The Labor Code and the Unprotected Workers.* See also Macaraya, B. (1999) "The Labor Code and the Unprotected Workers," *Proceedings of the Philippine Industrial Relations Society National Conference*, Diliman, Quezon City, Philippines.

They do not form part of the employment relations in a typical business or enterprise.

GLOBAL ECONOMY AND THE PHILIPPINE LABOR CODE

There has been a paradigm shift in the larger economic system. This shift was from import substitution to export-led or global economy. The problem is that the Labor Code that established a labor administration subsystem does not respond to this change in paradigm.

It all began in 1987 when structural adjustments[5] were introduced aimed at reorienting the economy from import substitution to export-led. Several policy instruments were introduced aimed at forcing domestic industries to move from domestic market revenue dependent on the international market.

The most telling among these policy reforms was the lowering of tariff and other protective measures. This facilitated the entry of foreign-made goods in the domestic market that in turn caused stiff competition. Because of the heightened competition, domestic industries were forced to export and to implement reforms to make their operations efficient. Among these reforms was re-engineering of operations.[6] Initially, such re-engineering resulted to massive lay-off of workers particularly in the protected industries where trade union presence was strong. Others who could no longer compete were forced to close shop.

Then came the re-orientation of labor process by identifying the core and the non-core activities. The non-core activities were sourced out either to independent contractors or to labor cooperatives. Finally came international subcontracting introduced largely by multi-national corporations. These are the call centers

[5] For discussions on structural adjustments see for example Standing, G. (1991) *Structural Adjustments,* International Labor Office, Geneva, Switzerland. For the Philippine experience see for example Macaraya, B. and R. Ofreneo (1993) "Structural Adjustments and Industrial Relations: The Philippine Experience," *Philippine Labor Review,* vol. 16, No. 1, pp. 26-86.

[6] For more on the impact of structural adjustments to employment relations see for example Dey, I. (1989) "Flexible Parts' and 'Rigid Fulls': The Limited Revolution in Work Time Patterns," *Work, Employment and Society,* vol. 3, pp. 465-490; Smith, C. (1989) "Flexible Specialization, Automation and Mass Production," *Work, Employment and Society*, vol. 3, pp. 203-220.

and other activities that had been passed on to the third world countries were labor is much cheaper.

The net impact of all these phenomena was to force change in employment relations even without amending the Labor Code. Employers were forced to avail of the services of what was then known as atypical employment relations for them to survive in the industry. Figure 2 shows the new employment relations forced upon us by globalization. As shown in the figure, the modern employer-employee relations include atypical employment as part of employers' regular workforce. In other words, arrangements that were previously known as atypical employment have now become typical employment. Today it will be hard to find a corporation or business that do not have employment relations other than regular employment.

The said employment relations are not confined solely to domestic industries. Multi-national corporations also employ them under the banner of international outsourcing. Thus it is possible that some activities of these corporations are outsourced to another country and those workers under what we originally know as atypical employment may be physically located in other countries. In one case, a world famous garment company outsourced its products to the Philippines with the former not even bothering to open an office in our country.

Having laid down the basic changes in employment and industrial relations environment brought about by the shift in economic paradigm from import substitution to export-led, we are now ready to discuss some policy issues on labor administration.

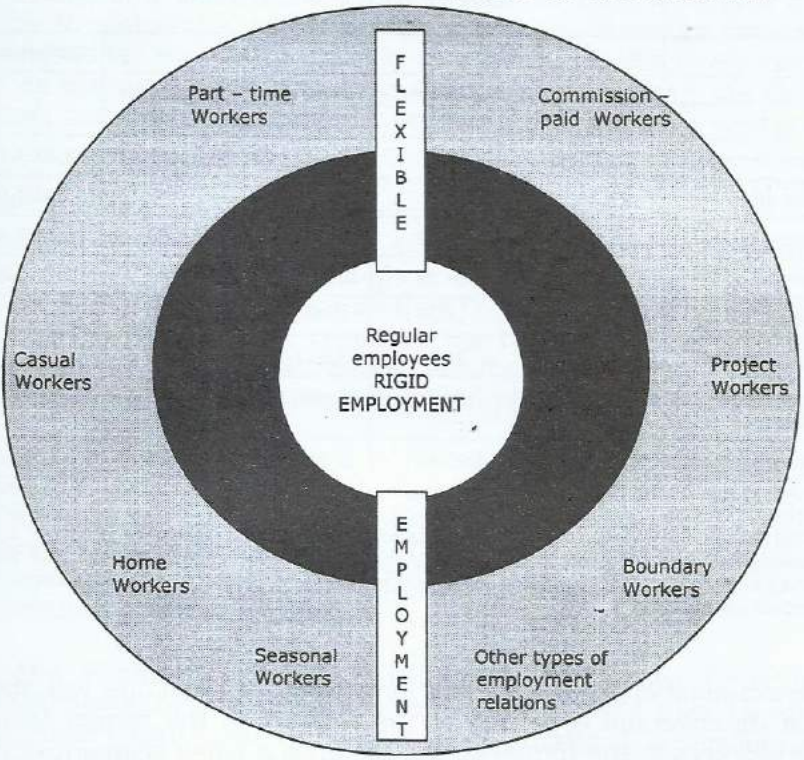
ANALYZING PUBLIC POLICIES

This paper will use two yardsticks in the examination and analysis of public policies: a) how effective are they? and b) how relevant are they?

a) Effectiveness - a public policy must be effective in carrying out its purposes and objectives. Effectiveness largely refers to efficacy or the level of success that could be achieved by such public policy. This is directly related to its purposes or objectives. It must be broad and at the same time sufficiently comprehensive to ensure success.

b) Relevance - a public policy must address present situation and must be broad enough to cover future similar situation.

FIGURE 2. THE NEW EMPLOYMENT RELATIONS IN THE PHILIPPINES



A public policy should be dynamic and must be capable of adjusting to changing situations. A public policy that could no longer address such situations must be updated or discarded as they may have already become archaic.

POLICY ISSUES AND OPTIONS

1. The Effectiveness of the Labor Code: Issues and Options

The most fundamental issue concerns the effectiveness of the Labor Code. The mandate of the Code is to protect the workers and improve their standard of living. To ensure effectiveness in

pursuing its mandate, the Code must cover majority of the Filipino workers.

Table 1. Comparative Figures in the Formal and Informal Sectors 1999 and 2003[a]

	1999		2003		Difference
	No. of workers	% to total employed	No. of workers	% of total employed	
Labor Force	30,758,000	90.19 (9.8)[b]	34,571,000	88.61(11.4)[b]	**+3,813,100**
Total employed	27,742,000		30,635,000		**+2893,000**
Formal sector	6,013,688	21.68	5,706,460	18.62	**-307,228**
Informal sector	18,069,322	65.13	20,013,540	65.32	**+1,944,218**
Wage & salary	3,932,312	14.17	4,868,540	15.89	
Self employed	8,864,000	31.95	9,912,000	32.35	
Domestic helpers	1,498,000	5.40	1,486,000	4.85	
Unpaid workers	3,775,000	13.61	3,765,000	12.28	

Source: Leogardo, V. J. (2004) "Addressing the Roots of Decent Work Deficits: Issues and Priorities," A paper presented during the 2nd High-Level National Policy Dialogue on the Social Dimension of Globalization, ILO Auditorium, ILO Manila, 2 December 2004
[a]Determined through residual methodology, using NSO Labor Force Surveys and Annual Survey of Philippine Business & Industry
[b]Percent unemployed

An examination of the various provisions of the Code will show that its coverage is limited to the workers in the formal sector. But workers in the formal sector comprise a small segment of the total workforce. Table 1 shows the comparative number of workers employed in the formal and informal sector of the Philippine economy for the years 1999 and 2003 respectively.

The number of workers employed in the formal sector of the economy and is therefore covered by the Code for the period 1999 and 2003 comprise only of 21.68 percent and 18.62 percent, respectively, of the total workforce. Also, for the same period the number of workers in the formal sector declined by 307,228. And the number of workers in the formal sector appears to continuously decline as globalization takes deeper roots.

On the other side, the number of workers in the informal sector for the same period comprised 65.13 percent and 65.32 percent, respectively. From 1999 to 2003, the workers in the informal

sector grew by 1,944,218. These are the workers not covered by the Code.

Given that only about 18 to 21 percent of our total workforce are in the formal sector of the economy and are therefore covered by the Code, the policy issue is can the Code effectively carry out its mandate? With such a small coverage, how can the Code protect and improve the standard of living of the Filipino workers?

The first option is that suggested by former Secretary Gerry Sicat that the Labor Code be repealed altogether as it has not protected, much more created, employment. He argued that the Code today has in fact become a deterrent in our efforts to attract foreign investors because they find our labor administration system too rigid But will repealing the Labor Code improve our efforts to attract foreign investors? Will foreign investors be willing to invest in a country without any kind of labor administration?

There are also political and practical issues that we have to resolve if we opt to repeal the Labor Code. Because we are a democratic country, will this be politically acceptable to the Filipino workers who constitute majority of our populace? Will our political leadership agree with this proposal knowing that they will be committing political suicide?

On the economic side, will repealing the Labor Code be advantageous to our domestic capitalist class? Will they be able to compete with large multinational corporations in availing of Filipino skills in the Philippines? Given these serious policy implications, the proposal to repeal the Labor Code cannot be an option.

The only policy option to make the Code effective is by enlarging its coverage. This will be discussed in detail.

2. The Relevance of the Philippine Labor Code in a Global Economy

2.1 Policy Issues and Options on Employment Relations

The Labor Code remained bias in favor of the concept of regular employment at the expense of other type of employment relations.

Article 280 of the Code provides that "the provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer."[8] Two important policy issues could immediately be drawn out of this provision.

The first concerns the definition of regular employees. As provided by law, a regular employee is one performing *activities usually necessary and desirable to the operations of an employer.* With this definition, is there an activity that could be outsourced without the employer running the risk of such contracted workers being declared as regular employee? Is janitorial service not necessary and desirable and therefore should not be outsourced? This provision of the law puts the exercise of such business arrangement as outsourcing at the mercy of the court that can declare those contracted workers as regular employees.

Second, this provision limits the coverage of the Code to workers classified as regular employees. Because it has condemned other forms of employment relations as not in accordance with law, the Code closes the avenue to regulate, protect and improve the standard of living of the larger Filipino workforce.

Repealing the Labor Code cannot be a policy option because of its adverse political and economic consequences to the nation. For the Code to be relevant it must cover majority of the Filipino workers. The key to enlarging the coverage of the Labor Code is to recognize and legitimize other types of employment relations.

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[8] The full text of Article 280 reads:
Article 280. Regular and Casual Employment. – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed regular where an employee has been engaged to perform activities usually necessary and desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of engagement of the employees or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
An employment shall be deemed casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one-year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

By so recognizing such types of employment relations the Code will now open the avenue to supervise and regulate them. And this reform is necessary given that as a consequence of globalization what formerly was called as atypical employment relation has now become typical feature of employment relations.

In more practical terms, one may wish to consider shifting paradigm from the concept of regular employees to the concept of financially dependent employees as a yardstick in the determination of employment relations. Thus we may define employment relations as follows:

> *Employment relations shall include the following: a) employees with indefinite term; b) employees with definite term; c) project employees; d) seasonal employees; e) those paid by result; f) those paid by commission; and g) other employees who are financially dependent on an employer.*

The reform is putting into law the current practices in labor administration forced upon us by trends in globalization.

2.2. Policy Issues and Options on Security of Tenure

Another issue to consider concerns the concept of security of tenure in Article 279.[9] The law provides that a regular employee may not be dismissed except for a cause or when authorized by law.

The concept of security of tenure originated from the public sector under the 1935 Philippine Constitution. Our forebears deemed this concept necessary to ensure continuity of public service even when we regularly change political leadership as an aftermath of an election. But when the Code was promulgated, this provision

[9] The full text of Article 279 reads:

Article 279. Security of tenure. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

was adopted and made applicable to workers employed in the private sector.

During the Martial Law regime, security of tenure was used to get the support of the workers and their unions for the regime. In fact at that time dismissing workers was made more stringent when President Ferdinand Marcos required employers to first secure clearance from the government before they could dismiss a worker. And this is more so when dismissing an officer of a union. I could recall there was a parallel General Order that required military and police officers to get a clearance from the Secretary of Labor before they could arrest labor leaders.

This requirement of law is often cited as the most difficult for an employer to effectively manage his operation. It has been pointed out that this provision deters our efforts to attract foreign investor to the country.

The question often asked is: is it fair to employers that the government will usurp employers' prerogative to dismiss a worker for whatever reason? What investment or exposure that the government has in business to be entitled to have the last say in the dismissal of workers? Is this not a violation of the right to contract? Is it not a truism as affirmed by our Courts that he who has the power to appoint also has the corresponding power to dismiss?

The first option in this regard is to go back to our original system of termination pay. This concept of termination pay reinforces the authority of the employer to manage the corporation and to discipline its workers. On the part of the workers, he is given separation pay to tie him down while looking for a new job.

The second option is related to our proposal to change the concept of employment relations. If you opt to retain security of tenure because you feel it is needed to stabilize your operations then it may be observed subject to the type of employment relations that a particular worker was hired for. For instance employees with definite term may not be dismissed except for cause during the term of their contract. A project employee may not be dismissed except for cause during the existence of the project or the portion of the project to which he was hired. And seasonal employees during the season they were employed. But after the term or project is completed his employment may no longer be renewed.

2.3. Policy Issues and Options on Minimum Wage Fixing

It has been argued that the minimum wage fixing has resulted to an artificially high wage rates in the Philippine that discourages foreign investors.

The Labor Code did not establish the minimum wage rates. The Code simply established a machinery mandated to fix the minimum wage rates. In Article 120, the National Wages and Productivity Commission was created to determine the minimum wage rates based on regional setting.[10] Below the National Wages and Productivity Commission are Regional Tripartite Wage and Productivity Boards that are tasked to determine the minimum wage rate in the regions.[11]

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[10] The provisions of Article 120 reads:

Article 120. Creation of National Wages and Productivity Commission. – There is hereby created a National Wages and Productivity Commission, hereinafter referred to as the Commission, which shall be attached to the Department of Labor and Employment (DOLE) for policy and program coordination.

[11] Article 122 reads as follows:

Article 122. Creation of Regional Tripartite Wages and Productivity Boards. – There is hereby created Regional Tripartite Wages and Productivity Boards, hereinafter referred to as Regional Boards, in all regions, including the autonomous regions as may be established under the law. The Commission shall determine the offices/headquarters of the respective Regional Boards. The Regional Boards shall have the following powers and functions in their respective territorial jurisdiction:

(a) To develop plans, programs and projects relative to wages, income and productivity improvement for their respective regions;

(b) To determine and fix minimum wage rates applicable in their region, provinces or industries therein and to issue the corresponding wage orders, subject to guidelines issued by the Commission;

(c) To undertake studies, researches, and surveys necessary for the attainment of their functions, objectives and programs, and to collect and compile data on wages, incomes and productivity and other related information and periodically disseminate the same;

(d) To coordinate with the other Regional Boards as may be necessary to attain the policy and intention of this Code;

(e) To receive, process and act on applications for exemption from prescribed wage rates as may be provided by law or any Wage Order; and

Several policy issues could be drawn out of the minimum wage fixing both in terms of substance and the process use to determine the minimum wage rates.

First, the broad issue: whether there is really a need to prescribe a minimum wage rate. Minimum wage rates only concern the workers in the formal sector particularly the wage and salaried.

As shown in Table 1, only 14.17 percent and 15.89 percent of the total workers are classified as wage and salaried for the years 1999 and 2003 respectively. Given the small portion of the workforce classified as wage and salary earners, what benefit would the minimum wage rates have on the Filipino workers?

On the contrary, because the wage and salaried workers are located in the most productive sector of the economy that produces essential goods such as canned foods, milk, clothing, medicine, etc. the increase in minimum wage rates will have a dire consequence of increasing the prices of these essential consumer goods often to the detriment of the larger non-wage and salaried workers.

A parallel issue is also being asked in the academe. With the long history of minimum wage fixing in the Philippines, why are our workers among the lowest paid in South East Asia as compared for instance with Singapore that has the reverse system of fixing

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(f) To exercise such other powers and functions as may be necessary to carry out their mandate under the Code.

Implementation of the plans, programs and projects of the Regional Boards referred to in the second paragraph, letter (a) of this Article, shall be through the respective regional offices of the Department of Labor and Employment within their territorial jurisdiction; Provided, however, That the Regional Boards shall have technical supervision over the regional office of the Department of Labor and Employment with respect to the implementation of said plans, programs and projects.

Each Regional Board shall be composed of the Regional Director of the Department of Labor and Employment as chairman, the Regional Directors of the National Economic and Development Authority and the Department of Trade and Industry as vice-chairmen and two (2) members each from workers and employer sectors who shall be appointed by the President of the Philippines, upon the recommendation of the Secretary of Labor and Employment, to be made on the basis of the list of nominees submitted by the workers and employers sectors, respectively, and who shall serve for a term of five (5) years.

Each Regional Board to be headed by its chairman shall be assisted by a Secretariat.

the ceiling wage? Is government intervention through the minimum wage fixing the key to improve the standard of living of the workers? Or should we leave wage determination to the vagaries of the market?

The second important issue concerns the concept of minimum wage and the process of determination. The minimum wage rate is calculated to keep both body and soul of the workers together. It is an economic estimation to protect the health and welfare of a worker.

If this is the basis for estimating the minimum wage rates, then the Philippines should have only one minimum wage rate. And this is because it is difficult to argue that the amount needed to keep a worker in Sulo alive is substantially less than that needed to keep a worker in Manila alive.

In the Philippines, our determination of minimum wage rate is by region (on the assumption that each region has different standard of living). As a consequence, we could not immediately respond to prospective foreign investors on a simple question as how much is the minimum wage in the Philippines? And if we attempt to explain to the prospective investor our minimum wage setting, he might be confused and discouraged from investing here. Today, what is now considered a minimum wage rate is an entry rate of most, if not all, Philippine employers.

The minimum wage fixing is no longer a purely economic determination but had been transformed into political-economic determination. The determination is anchored on what is acceptable to the social partners in the region. It has in fact become a regional extension of enterprise wage bargaining.

Also, minimum wage fixing has negative impact on our efforts to strengthen collective bargaining. Our trade unions have increasingly become dependent on the minimum wage setting in their efforts to improve the wages of their members. Essentially the argument is: since minimum wage constitutes the hiring rate of most, if not all, enterprises in the Philippines, increasing the same will necessarily justify their (unions) demand for higher rates of pay, an escalation effect, on the upper wage rates.

Several options could be drawn out of the above discussion.

The first at the macro level is, whether we should continue having minimum wage fixing or simply leave wage determination to the market. In Singapore where they have wage ceiling rates, their workers are better paid than our workers in the Philippines.

The other option is to go back to the old concept of minimum wage determination. It should be a purely government determination and not a subject of collective bargaining among the social partners in the region.

2.4. Policy Issues and Options on the Freedom of Association

The right to association is a hallmark of a democratic society. In the Philippines - aside from our international commitments - the right to association is a constitutionally guaranteed right.

Trade unions are necessary in a democratic system. Unlike the experiences of other countries where trade union enrollment is declining as a consequence of globalization, in the Philippines, the trade unions reported increase in membership. Table 2 shows trade union membership for the period 1993 to 2002. In absolute terms, the membership increased from 3,196,750 in 1993 to

Table 2. Number and Membership of Existing Labor Organizations as Percent To Wage and Salaried Workers, Philippines: 1993 – 2002

Year	Total Existing Labor Organizations		
	Number	Membership	% to Total Wage & Salaried Workers
1993	6,340	3,196,750	29.6
1994	7,274	3,511,084	31.0
1995	7,882	3,586,835	30.2
1996	8,250	3,612,353	28.6
1997	8,822	3,634,638	27.0
1998	9,374	3,686,773	27.0
1999	9,850	3,731,076	26.4
2000	10,296	3,788,304	27.2
2001	10,924	3,849,976	26.7
2002	11,365	3,916,684	26.7

Source of information: 2003 Yearbook of Labor Statistics, Department of Labor and Employment, Manila

3,916,684 or a growth by 719,934 for the last decade. But in terms of percentage to total wage and salaried workers, their membership declined from 29.6% in 1993 to 26.7% in year 2002.

However, given that our wage and salaried workers only constitute 18% to 21% of the total workforce, trade union membership would appear relatively insignificant.

Figures in Table 2 that were based on the reports of trade unions had recently been contested as bloated. As a result, the Bureau of Labor Relations of the Department of Labor and Employment had to revise the figures beginning the year 2002. Table 2a shows the membership of trade unions based on a survey conducted by the Bureau of Labor Relations.

The figures in Table 2a show that the actual membership of trade unions is half of what they reported in Table 2. They also indicate an increase in membership from 1,469,328 to 1,572,289 in the years 2002 and 2004, respectively. These figures however represent a little over 4 percent of the total workforce of 34 million.

Table 2a. Number and Membership of Existing Labor Organizations and Other Workers Associations, Philippines: 2002 – 2004

Indicators	2002	2003	2004
Unions Registered	910	647	777
Membership of Newly Registered Unions	89,187	44,794	53,857
Existing Unions	15,444	16,091	16,724
Membership of Existing Unions	1,469,328	1,516,862	1,572,289
Other Workers'Associations (WAs)			
Newly Registered	2,151	1,756	2,254
Membership of Newly Registered WAs	72,915	68,897	75,866
Existing Workers' Associations	4,227	5,983	8,237
Members of Existing WAs	141,591	210,488	286,354

Source of Data: Bureau of Labor Relations – Labor Organizations Division

The Director General of the Employers' Confederation of the Philippines (ECOP) pointed out that based on the 2002/2003 Bureau of Labor and Employment Statistics (BLES) Integrated survey, trade union membership for the periods 1996, 1997 and 2003 had actually declined. Table 2b shows the figures on trade union membership for the said period. Trade union enrollment declined from 2,606,000 to 2,582,000 for the periods 1996 and 2003 respectively.

Table 2b. Extent of Unionism in Establishment, 1996, 1997 and 2003

Year	Total Establishments	With Unions		Total Employment	Union Members	% Share
		Number	% Share			
1996	35,249[a]	5,973	16.9	2,606,000	726,000	27.9
1997	43,358[a]	7,028	16.2	2,864,000	681,800	34.4
[a]Employing 10 or More Workers Source of data: Survey of Specific Group of Workers, 1996 &1997, BLES						
2003	24,533[b]	3,640	14.8	2,582,000	521,000	20.2
[b]Employing 20 or more workers						

Source of data: 2002/2003 BLES Integrated Survey

There is a grain of truth to this argument. Table 3 shows the declining number of workers covered by collective bargaining agreement. Those workers covered by CBA should expectedly be higher than trade union membership because collective agreement also covers non-union workers who are members of the collective bargaining unit.

Despite the reported increase in trade union membership, we could expect that their enrollment will dwindle. The reason can be found in the provisions of the Labor Code concerning organizing trade unions for the purpose of collective bargaining.

The exercise by the workers of the right to association under the Code is anchored on the concept of regular employee as the determinant factor of employment relations. Under Article 234, a trade union can only organize for the purpose of collective

bargaining if it is supported by "the names of all its members comprising at least 20 percent of all the employees in the bargaining unit where it seeks to operate."[12] Because the number of regular employees that is the base of trade unions' organization in this country is declining, it is just a matter of time when their enrollment will eventually go down.

The first policy issue is to allow the deterioration of trade unions with the end in view of eventually eradicating them. But this policy option is not available to us because it will result to serious political and economic consequences to our country.

As a nation, the Philippines cannot afford to renege from its international commitment to promote trade unionism as a democratic institution. Moreover, the Philippine Constitution had already determined that freedom of association is not only to be protected but to be promoted as well. And finally, there is this issue whether such an option can be politically acceptable to the Filipino people.

On the economic front, I am sure you are aware of the on-going free trade and social clauses debate.[13] In this debate, access to

[12] The full text of Article 234 reads:

Article 234. Requirements of registration. - Any applicant labor organization, association or group of unions or workers shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements:

(a) Fifty pesos (P50.00) registration fee;

(b) The names of its officers, their addresses, the principal address of the labor organization, the minutes of the organizational meetings and the list of the workers who participated in such meetings;

(c) The names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate;

(d) If the applicant union has been in existence for one or more years, copies of its annual financial report; and

(e) Four (4) copies of the constitution and by-laws of the applicant union, minutes of its adoption or ratification, and the list of the members who participated.

[13] There is an existing debate on free trade and social clause. Under this debate, access to the market of members of WTO will be conditioned on the countries compliance with the eight (8) ILO Human Rights at Work Conventions. These Conventions could be broadly classified as:

the market of World Trade Organization members may be denied to countries that are found to have violated any of the eight ILO Human Rights at Work Conventions.[13a] Among these conventions is the freedom of association.

If the first option of allowing the trade unions to fade away is not available to us then you may wish instead to strengthen trade unionism, in line with our international commitment, by enlarging their membership. Trade unions should be given access to organize the non-regular employees and the workers in the informal sector. Since other types of employment relations had now become a regular feature in employment relations, these workers should also be allowed to join trade unions.

We could approach this problem by changing the provisions on organization of union. We may propose a change in policy that will allow a particular number of workers, for example 20 of similar skills or belonging to the same craft to form a union for their mutual aid and protection and for collective negotiations.

This option is not new. It simply brings us back to the original concept of trade unionism that was based on craft rather than industrial unit. Under the British system for instance, you may have plumber unions, builder unions, etc. In the Philippines, we have the stevedore unions that do not have any employment relations with the vessel that needs their services. A vessel that docks in South Harbor may go to a stevedore union to hire a gang or two to unload her cargo.

(a) Freedom of Association and effective recognition of the right to collective bargaining;

(b) the elimination of all forms of force or compulsory labor;

(c) the effective abolition of child labor; and

(d) the elimination of discrimination in respect of employment and occupation.

For more examples, see Department of Labor and Employment (1999) *ILO Conventions and Philippine Laws*, DOLE International Labor Affair Service, Manila.

[13a] During the conference, the ILO representative pointed out that ILO has already abandoned participation on this debate as tying down labor standards with access to the market of WTO members will constitute another form of protection.

2.4. Policy Issues and Options on Collective Bargaining

Under Article 251 of the Labor Code, the concept of collective bargaining is negotiation between the parts with the whole.[14] Consistent with the other provisions of the Code, collective bargaining is a right that could be exercised exclusively by workers in the formal sector.

Because collective bargaining is limited to the workers of the formal sector, its coverage is also limited. And because of the shift of economic paradigm that resulted to a shrinking rank of the workers in the formal sector, the number of workers covered by collective bargaining agreement is also progressively declining.

Table 3 shows the total number of Collective Bargaining Agreement and the extent of coverage for the period 1993 to 2002. The number of CBAs declined from 4,983 in 1993 to 2,700 in 2002. The number of workers covered by the CBA likewise declined from 608,876 in 1993 to 520,029 or a removal of 80,847 workers.

Table 3. Existing CBAs, Newly-Filed and Workers Covered, Philippines: 1993 - 2002

Year	Existing CBAs		New CBAs	
	Number	Workers Covered	Number	Workers Covered
1993	4,983	608,876	1,084	83,885
1994	4,497	532,185	762	56,942
1995	3,264	363,514	990	109,380
1996	3,398	410,777	818	131,446
1997	2,987	525,007	532	92,149
1998	3,106	551,021	432	68,616
1999	2,956	529,078	413	64,703
2000	2,687	484,278	419	73,109
2001	2,518	461,559	386	70,752
2002	2,700	520,029	588	114,417

Source: Department of Labor and Employment, 2003 Yearbook of Labor Statistics, DOLE, Manila

[14] The full text of Article 251 reads:
Article 251. Duty to bargain collectively in the absence of collective bargaining agreements. In the absence of an agreement or other voluntary arrangement providing for a more expeditious manner of collective bargaining, it shall be the duty of the employer and the representatives of the employees to bargain collectively in accordance with the provision of this Code.

Given the figures above that show less than one million workers covered by CBAs out of the estimated 36 million Filipino workers, we need not emphasize its impact or lack thereof in improving the standard of living of the Filipino workers in general.

Collective bargaining, aside from the fact that it is one of the standards enumerated in the social clause, is part of our international obligations as a nation. We are committed to improve its application rather than eliminate the same.

The Philippine Supreme Court is emphatic in declaring collective bargaining agreement as a social contract imbued with national interest. As such, it has to be protected. This is the reason why collective bargaining agreement should be registered with the Department of Labor and Employment as they affect not only the contracting parties but also those who have not participated therein.

The policy option I suggest is to reexamine our concept of collective bargaining that is limited to negotiations between the parts with the whole. For example, pedicab drivers association in one subdivision will conclude an agreement with the home owners association as to the rate of pay and exclusivity of the services, is this type of agreement not a social agreement imbued with national interest akin to Collective Bargaining? Is it not possible therefore to have an agreement that should be duly protected by law even if no employment relations exist? I submit that changing our concept of collective bargaining is in line with globalization as will be discussed in the portion contracting out.

2.5. Policy Issues and Options on Outsourcing

While there is no direct ban on contracting out, the Labor Code discourages such practice when it provides in Article 280 the definition of regular employees as those "whose services have been engaged to perform activities usually necessary and desirable in the usual business or trade of the employer."

Article 106 of the Code explicitly recognized contracting out as a business strategy.[15] As a general rule, employers are free to contract out any activity. The law bans only one type of contracting out – the type that would constitute unfair labor practice.

Contrary to the general impression, the Code had not prohibited labor-only contracting. The Labor Code simply allowed the Secretary of Labor to determine whether labor only contracting should be regulated or banned. In a sense, it was the Secretary of Labor through appropriate issuance that banned labor only contracting.

Contracting out or what is commonly known now as outsourcing can be broadly classified into two types: (a) tripartite or triangular relations; and (b) bi-partite relations.

(a) Tripartite or triangular relations – This type of outsourcing presupposes a second employer that contracts to perform an activity of the principal employer.

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[15] The full text of Article 106 reads:

Article 106. Contractor or subcontractor. – Whenever an employer enters into a contract with another person for the performance of the former work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of the workers established under this Code. In so prohibiting or restricting, he may make appropriate distinction between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

An examination of the provisions of Article 106 shows that the Code focuses more on tripartite or triangular relations rather than bipartite relations. Thus the law speaks "whenever an employer enters into a contract with another person for the performance of the work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code."[16] It simply states that when the contractor or subcontractor fails to pay the workers, then the principal employer shall be jointly and severally liable with the contractor or subcontractor to the claims of the workers.

(b) Bilateral relations – Bilateral relations occur when an employer directly contract out to the workers an activity without any contractor or subcontractor.

This is perhaps the most important type of contracting out forced upon us by globalization. Because of the acquired skills of the workers performing a particular activity, the trend is to form labor cooperatives composed of former employees that will contract out such activity.

Lastly and in line with globalization, this bilateral arrangement points out to the possibility of having a CBA without the existence of employer relations. This type of agreement today are generally classified as business contract and therefore not imbued with national interest. It is therefore not entitled to special protection by law.

On the trilateral or triangular relations, the problem that we commonly face concerns international outsourcing. How can we implement Article 106 in the case like the call center whose primary employer is located or domiciled in New York and without any office in the Philippines? The logical option is to require them to put up a bond to answer for any liability that they may incur to the workers in the Philippines. But if we do this, will such corporations still be willing to operate in the Philippines?

On the bilateral relations, one may wish to consider expanding collective bargaining agreement to include agreements entered into by a trade union or labor cooperative concerning activities that they have contracted. In the case of San Miguel Corporation

[16] Ibid.

for instance, it phased out its sales force. In its place, it organized its former workers into cooperative and allowed this cooperative to contract out the sales activities. Will this contract not qualify as collective bargaining agreement especially if it contains an exclusivity clause?

The case of Dole Philippines is another example. As a consequence of land reform their agricultural workers became owners of the farms. These former workers formed themselves into a worker cooperative (this is because of the legal limit in organizing trade unions) and Dole concluded an agreement with them to purchase all their agricultural products. In other words, the relations had been converted from one of employment relations to supplier. Essentially, this is a business contract and at the moment treated as such without special protection. Will this type of contract that provides for exclusivity of supplier not qualify as collective bargaining agreement and therefore imbued with national interest that will be entitled to special protection?

The problem from the perspective of policy that we will have to confront concerns the prohibition of labor only contracting. We could expect that as workers organization, may they be trade unions or labor cooperatives, they will not be able to comply with the legal requirement of sufficient capital.

The options that are available to us is to dispense with the requirement of sufficient capital when the contracting party is a trade union or labor cooperative. Put in different perspective, to consider skills of the workers as compliant with the requirement of sufficient capital.

2.6. Policy Issues and Options on Assumption of Jurisdiction

Under Article 263 (g) of the Labor Code,[17] the law authorizes the Secretary of Labor and Employment to assume jurisdiction over "strikes or lockout in an industry indispensable to the national

[17] The full text of Article 263 (g) reads:

Article 263. Strikes, picketing, and lockouts. –

x x x

interest."[18] As a general rule, the law leaves to the discretion of the Secretary of Labor and Employment what industry is indispensable to national interest.

From the perspective of history, it has been argued that the above provision of law was a Martial Law instrument used to

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(g) 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 shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or lockout employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.

In line with the national concern for the highest respect accorded to the right of patients to life and health, strikes and lockouts in hospitals, clinics and similar medical institutions shall, to every extent possible, be avoided, and all serious efforts, not only by labor and management but government as well, be exhausted to substantially minimize, if not prevent, their adverse effects on such life and health, through the exercise, however legitimate, by labor of its right to strike and by management to lockout. In labor disputes adversely affecting the continued operation of such hospitals, clinics or medical institutions, it shall be the duty of the striking union or locking-out employer to provide and maintain an effective skeletal workforce of medical and other health personnel, whose movement and services shall be unhampered and unrestricted, as are necessary to insure the proper and adequate protection of the life and health of its patients, most especially emergency cases, for the duration of the strike or lockout. In such cases, therefore, the Secretary of Labor and Employment may immediately assume, within twenty four (24) hours from knowledge of the occurrence of such strike or lockout, jurisdiction over the same or certify it to the Commission for compulsory arbitration. For this purpose, the contending parties are strictly enjoined to comply with such orders, prohibitions and/or injunctions as are issued by the Secretary of Labor and Employment or the Commission, under pain of immediate disciplinary action, including dismissal or loss of employment status or payment by the lacking-out employer of backwages, damages and other affirmative relief, even criminal prosecution against either or both of them.

The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that in his opinion, are indispensable to the national interest, and from intervening at any time and assuming jurisdiction over any such labor dispute in order to settle or terminate the same.

[18] Ibid.

ensure industrial peace during allegedly an abnormal situation in the country.[19] Whether this law succeeded in achieving its objectives during Martial Law period or not - and this remains debatable - the fact is we allowed this law to continue even after we shifted political regime from Martial Law to the present democratic system.

The issue on this count is that assumption of jurisdiction or its defiance had increasingly been used to achieve political ends. Either of the party defies a legitimate return to work order arising out of assumption of jurisdiction to show the impotence and thereby embarrass the government. In Hacienda Luisita for example, it would appear that there was deliberate refusal by the workers to comply with the return to work order. According to some DOLE officials, the striking workers deliberately provoked the government into using force by putting a chain on the gate so that it could not be opened and force stoppage of operations. To further embarrass the government, the striking workers and their sympathizers took over the building of the Department of Labor and Employment in Intramuros. The end result was that the workers succeeded in elevating a simple labor dispute into political activity. And because of Congressional investigations that followed the incident, the labor issues that were the original causes of the strike had been put to the back burner.

The policy issue in this area is how could we prevent the use of a labor tool such as assumption of jurisdiction from being utilized to achieve political ends?

It appears that the problem of defiance of return to work order in an assumption of jurisdiction situation could be attributed to the unlimited discretion of the Secretary of Labor and Employment in defining industries indispensable to national interest that would warrant the exercise of such power. To embarrass the government, the defying party normally points out to the fact that their Company does not belong to industries indispensable to national interest.

To resolve this problem, the first option one may wish to consider is to pre-determine the industries indispensable to national interest. By so predetermining such industries, the parties will be aware

[19] See for example the testimony of former Undersecretary Amado G. Inciong during the Congressional investigation of the Hacienda Luisita case.

even before they file their notice of strike or lockout that their company belongs to industries indispensable to national interest. Therefore the DOLE Secretary will eventually assume jurisdiction or certify their dispute to the National Labor Relations Commission.

The other option is to require the conduct of a hearing for the purpose of determining whether a company belongs to an industry indispensable to national interest before the Secretary of Labor and Employment assumes jurisdiction or certify the case to the NLRC. This will give the parties a chance to contest whether their company can be classified as belonging to an industry indispensable to national interest.

2.7 Policy Issues and Options on the Eight-hour Labor Law

The unit measurement prescribed by the Labor Code in the determination of employment relations is daily. Under Article 83 of the Labor Code "the normal hours of work of any employee is eight hours a day."[20] This provision of law limits the ability of employers to achieve flexibility that is necessary to remain competitive in a global economy.

One may wish to consider shifting measurement of employment relations from the present daily to hourly. For example a worker may be hired only during the time his services are needed, for example three hours. By so shifting measurement, employers can achieve maximum flexibility in employment relations.

[20] The provisions of Article 83 reads:
(1, Article 83. Normal Hours of Work. – The normal hours of work of any employee shall not exceed eight (8) hours a day.

Health personnel in cities and municipalities with a population of at least one million (1,000,000) or in hospitals and clinics with a bed capacity of at least one hundred (100) shall hold regular office hours for eight (8) hours a day, for five (5) days a week, exclusive of time for meals, except where the exigencies of the service require that such personnel work for six (6) days or forty-eight (48) hours, in which case they shall be entitled to an additional compensation of at least thirty per cent (30%) of their regular wage for work on the sixth day. For purposes of this Article "health personnel" shall include: resident physicians, nurses, nutritionists, dieticians, pharmacists, social workers, laboratory technicians, paramedical technicians, psychologists, midwives, attendants and all other hospital or clinic personnel.

Shifting measurement from daily to hourly will also be advantageous to the worker. A worker may opt to work with one employer for four hours and with another employer for another four hours. If the worker is a nursing mother she may work only for four days and she may also choose the time of work that will not be in conflict with her motherly obligation. The worker, thus, will now have full control of her labor power.

This shifting measurement will also render the concept of overtime pay archaic. The reason why the law requires premium payment for overtime is that the workers are forced to render service beyond the eight hours. If we shift from daily determination to hourly, then a worker who would need additional income will be able to program his work. He may seek employment with a third employer for another four hours.

This option is not new as law practitioners for example or consultants use hourly rate as measurement in the determination of their employment relations. Also, many of the Filipinos working for instance in Europe and the United States do have multiple employers. Moreover, the shift in measurement from daily to hourly is more in line with a global economy.

2.8. Policy Issues and Options on the Need to Update the Provisions of the Labor Code

Aside from the need to amend the Labor Code, as a consequence of the shift in economic paradigm and the advancement in technology, there is also a need to update its various provisions.

First, on wages, the law requires that the workers shall be paid in legal tender,[21] in the place of undertaking or near the workplace[22]

[21] Article 102 of the Labor Code reads:
Article 102. Forms of Payment. – No employer shall pay the wages of an employee by means of promissory notes, vouchers, coupons, tokens, tickets, chits or any object other than legal tender, even when expressly requested by the employee.

Payment of wages by check or money order shall be allowed when such manner of payment is customary on the date of effectivity of this Code, or is necessary because of special circumstances as specified in appropriate regulations to be issued by the Secretary of Labor or as stipulated in a collective bargaining agreement.

[22] Article 104 of the Labor code reads:

and directly to him.[23] However, with the advent of computers, many of the workers are now paid through the ATM. This practice is contrary to law as the ATM card is not a legal tender, the payment is not in the place or near the place of employment and more importantly, the wage is not directly paid to the worker concerned.

The second example concerns the provisions of night differential. The Labor Code requires an additional compensation for "work performed between ten o'clock in the evening and six o'clock in the morning."[24] As discussed previously, a global economy does not have territorial boundaries. It also crosses time zones. In the call centers for example, workers are forced to work at night because that is the working time in the country where the business of their employer operates. This provision of law is too domestic that it may no longer have a place in a global economy.

Article 104. Place of payment. – Payment of wages shall be made at or near the place of undertaking, except as otherwise provided by such regulations as the Secretary of Labor may prescribe under conditions to ensure greater protection of wages.

[23] Article 105 of the Labor Code reads:

Article 105. Direct Payment of Wages. – Wages shall be paid directly to the workers to whom they are due except:

(a) In cases of force majeure rendering such payment impossible or under other special circumstance to be determined by the Secretary of Labor in appropriate regulations, in which case the worker may be paid through another person under written authority given by the worker for the purpose; or

(b) Where the worker has died, in which case the employer may pay the wages of the deceased worker to the heirs of the latter without the necessity of intestate proceedings. The claimants, if they are all of ages, shall execute an affidavit attesting to their relationship to the deceased and the fact that they are his heirs, to the exclusion of all other persons. If any of the heirs is a minor, the affidavit shall be executed on his behalf by his natural guardian or next of kin. The affidavit shall be presented to the employer who shall make payment through the Secretary of Labor or his representative. The representative of the Secretary of Labor shall act as referee in dividing the amount paid among the heirs. The payment of wages under this Article shall absolve the employer of any further liability with respect to the amount paid.

[24] Article 86 of the Code reads:

Article 86. Night shift differential. – Every employee shall be paid a night shift differential of not less than ten per cent (10%) of his regular wage for each hour of work performed between ten o'clock in the evening and six o'clock in the morning.

CONCLUSION

This paper attempted to discuss labor market and industrial relations environment with a focus on policy issues, concerns and options in a global economy. It was conceived primarily as a working paper to analyze the kind of policy changes that should be adopted to make the Philippine labor administration responsive to the new economic system. And because it is primarily a labor policy paper, it focuses on the Labor Code which is the main instrument that established labor administration in the country. This labor administration system compliments the need of the old economic regime called import substitution.

While there has been a shift in economic paradigm, our Code that established a subsystem of the economic system remained the same. The consequence is that many of its provisions have now become too domestic and archaic. It could not properly respond to situations created by globalization.

Because of the change in economic paradigm, there should be corresponding change in paradigm of the labor administration system. This means making amendments on the Labor Code that address the needs of the new economic system.

There are several bills now pending in Congress that seeks to amend the Labor Code. A perusal of these bills however show that they address the specific provisions of the Code without first looking at changing the broad labor administration paradigm to conform to the shift in economic paradigm. We see the trees and not the forest.

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