

Labor Relations: An Interfacial Necessity For Human Resource Development and Industrial Relations*

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ABSTRACT

With the inclusion of Book V (Labor Relations) in the omnibus effort to review the Philippine Labor Code, the industrial relations system becomes a subject of scrutiny, rendering it important to consider socio-cultural, economic, political and environmental factors. Overall, this paper presents the proposition that continued adherence to the primacy of collective bargaining in the Labor Code for the 21st Century sweeps the rug out of the labor market and collective behavior assumptions that should form the basis of future labor-management relations. The particular chapters printed here establish incongruities in affirming the primacy of collective bargaining under the classical framework vis-à-vis the emergent approach and basic empirical data.

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THE BREAK FROM FUNDAMENTALISM

Philippine industrial relations is at a crossroads. The current Book V (Labor Relations) model needs to confront its incongruities with reality. The right to self-organization as guaranteed by labor relations law primarily caters to the collective bargaining framework. But with fewer Filipino workers covered by collective agreements, workers' efforts at seeking a "voice" in the workplace, whether individual or collective, have been straitjacketed into a sense of "industrial relations fundamentalism." Workers' self-organizational and participatory freedoms have been drastically reduced to the option of unionization. There is hope offered by mutual aid and social capital unionism efforts, the creation of guilds, more aggressive and globally-linked organizing of unorganized sectors, or social movement approaches, but State policy under Book V could offer only the primacy of collective bargaining.

The naked reality is this: 30,508,000 Filipinos in the labor force are not governed by the Philippine law on labor relations. Hence, there is a primordial necessity to close the "representation gap" between the organized sector and the rest of the Philippine labor force. These unorganized segments can be divided along formal and informal sector lines.

A MARRIAGE PROPOSAL

Covering the unorganized formal sector in a new labor relations framework enters the realm of human resource development (HRD). These would include engagement of "primeval" conditions of the worker before or in the absence of union representation. At the onset of company operations, HR management personnel deal with manifestations of pro-social, defensive, and acquiescent "voice"¹ by employees.

Transcending individual "voice" behavior are various forms of employee involvement, in its "hard" variant when management of human resources is integrated with other elements of corporate strategy, possibly involving one-way communication channels; in its "soft" variant the emphasis on management of "resourceful"

¹ Linn Van Dyne, Soon Ang and Isabel C. Botero, *Conceptualizing Employee Silence and Employee Voice as Multidimensional Constructs*, 40 J. OF MGT. STUDIES 1359, 1369-74 (2003).

humans, and to assumptions that employees represent an important asset to the organization and a potential source of competitive advantage.²

More participatory approaches highlight increased employee involvement in the workplace. In the United States, four common labels are applied to participatory management efforts, namely labor-management committees, quality of work life projects, quality control circles, and employee production teams.³

As far back as 1980, Gatchalian and Dia already emphasized the need to inject the concept of "worker participation" at the enterprise level. They predicted the emergence of a social order that was "egalitarian, participatory, self-reliant, and humane" going into the 21st century. But they also warned that workers' participation requires change and transition in all levels of industrial society.⁴

Needless to state, Filipino values of non-egocentric personalism and the "familycentric" character of social organizations conjured a "management by culture" approach that enhances harmony, unity, and cooperation in the company.⁵

Enterprises that have transformed into "people-focused" organizations recognize that the information necessary to formulate strategy is with their frontline people who know what is actually going on.⁶

In essence, (people-focused organizations) highlight the importance of the basic concepts of information sharing, consultation and two-way communication. The effectiveness of procedures and systems which are

² Mick Marchington. *Involvement and Participation*, Human Resource Management: A Critical Text (John Storey, ed.) 280 (1995).

³ Note. *Participatory Management Under Sections 2(5) and 8(a) (2) of the National Labor Relations Act*, 83 Mich. L. Rev. 1736, 1738 (1985).

⁴ Jose C. Gatchalian and Manuel A. Dia. *Workers' Participation in the Philippines: An Exploration of Issues and Prospects*, 5 Phil. Lab. Rev. 15, 31 (1980).

⁵ F. Landa Jocano. *Towards Developing A Filipino Corporate Culture*. 166-174 (1999 ed.).

⁶ Sriyan de Silva. *The Changing Focus of Industrial Relations and Human Resource Management*, Paper presented at the ILO Workshop on Employers' Organizations in Asia-Pacific in the Twenty-First Century, Turin, Italy, May 5-13, 1997.

established for better information flow, understanding and, where possible, consensus-building, is critical today to the successful managing of enterprises and for achieving competitiveness. As such, the basic ingredients of sound enterprise level labour relations are inseparable from some of the essentials for managing an enterprise in today's global environment. These developments have had an impact on ways of motivating workers, and on the hierarchy of organizations. They are reducing layers of management thus facilitating improved communication. Management today is more an activity rather than a badge of status or class within an organization, and this change provides it with a wider professional base.⁷

"People-focused" approaches are reflective of the emergence of HRM over traditional personnel functions. HRM is preoccupied with utilizing the human resource to achieve strategic management objectives. HRM emphasizes strategy and planning rather than problem solving and mediation.⁸

Jimenez has introduced an "employee and labor relations master plan" that undoubtedly represents an HRM "people-focused" approach. There are three strategic thrusts in this model, namely: (1) management of the employee relations environment; (2) relating to people; and (3) management of internal employee relations systems.⁹ Specific programs and expected results are outlined to ensure the success of the plan.¹⁰

⁷ *Id.* at 12.

⁸ *Id.* at 22.

⁹ Josephus B. Jimenez, Presentation at a DOLE-ILO-Ancilla Consulting management education forum entitled "Labor Relations for Foreign Employers", Clark Economic Zone, Pampanga, October 19, 2003.

¹⁰ *Id.* In management of the employee relations environment, he established the following programs: coping with trends in the labor front, keeping pace with government policy and legislation, and reconciling employee relations with business goals. Hence, the following results are expected: familiarity with the risks and challenges, mastering the rules, and achieving a balance between business and people. In terms of relating to people, the programs are improving communication systems and grievance management, enhancing rewards and sanctions, and restructuring the dispute settlement system. The results are: better channels of interactions, clear systems of motivation and control, streamlined effective dispute settlement system, and non-adversarial employee relations approaches. With management of internal employee relations systems, the programs are clarifying company policies and norms, empowering managers and improving internal communication. The results are: understanding of and commitment to norms, confident and committed managers and supervisors, and well-coordinated and balanced systems.

HRM undoubtedly exists even in a unionized environment, where the collective bargaining model of industrial relations prevails. There are, of course, theoretical and practical differences between the HRM and industrial relations systems. Table 1 presents these distinctions.

Table 1 . IR/HR INTERFACE¹¹

INDUSTRIAL RELATIONS	HR MANAGEMENT
Collectivist/pluralist	Individualistic
Consists of large component of State rules	Deals with policies and practices
Assumes potential conflict	Unitarist, sees commonality of interests
Involves unions in standardization of wages, contracts, functions, working hours	Individualization of employment through equity and efficiency
At periphery of corporate planning	Integrated to corporate strategy
Adversarial employer-employee relations	Harnessing employee loyalty and commitment

To translate industrial relations strategy into the realm of labor-management relations in the non-unionized formal sector is the challenge that social partners in industrial relations must face. De Silva enumerates preconditions to this "marriage" or task of harmonization:¹²

- ❑ Changes in both management and union attitudes.
- ❑ Acknowledgement of the link between employee development and enterprise growth.
- ❑ Recognition that employer and employee interests are not only divergent but also common.
- ❑ Both HRM and IR should be prepared to accommodate the other, without HRM viewing IR (and vice-versa) as its nemesis.

¹¹ De Silva, *supra* note 155, at 25-27.

¹² *Id.* at 28-29.

- Unions would need to be more willing to involve themselves in HRM, and not over-emphasize their national agenda.
- Changes in IR thinking, in terms of redesigning collective bargaining to accommodate workplace issues and less adversarial relations.
- IR needs to open its doors to other social disciplines.
- IR would have to recognize that communication in an enterprise need not necessarily be only effected collectively.
- Managements should be willing to involve unions in HRM initiatives.
- A more strategic perspective of IR needs to be developed, going beyond traditional objectives such as distributive justice, and espousing productivity and competitiveness.

This marriage of IR and HRM will develop a firm labor relations policy for the unorganized formal sector. Workers and employers shall have firm guidance from statutory law relative to strategies to pursue company objectives, uphold workers' rights, and compete in the global market.

LABOR-MANAGEMENT COMMITTEES: TOWARDS WORKPLACE DEMOCRACY AND COOPERATION

1. Current Policy

Article 277 (h) of Book V states that in unorganized establishments, labor-management committees (LMC) may be formed voluntarily by workers and employers for purposes of promoting industrial peace. While the statute is silent on LMCs in organized establishments, the 1989 rules implementing Book V mandated the DOLE to promote the formation of LMCs in such entities. But no system of representation in LMCs for both unionized and non-unionized establishments was laid down in the issuance.¹³

¹³ Omnibus Rules Implementing the Labor Code (as amended 24 May 1989), Book V, Rule XII, Section 1.

In 1997, the rules implementing Book V were amended to provide for a process of representation in LMCs in both organized and unorganized establishments.¹⁴ Such a rule of representation has been transplanted to the current issuance amending the Book V rules.¹⁵

2. History

There were already attempts to introduce workplace cooperative schemes as far back as 1976, in the penumbral set of issuances that supported the primary collective bargaining framework. Originally, Article 231 of Book V granted the Bureau of Labor Relations the authority to "certify collective bargaining agreements which comply with standards established by the Code"¹⁶

In 1976, then Minister Blas F. Ople clarified that labor-management cooperation schemes were "directory requirements" in the certification of CBAs.¹⁷ A presidential instruction issued in 1978 subsequently requested government, the employers and trade unions to formulate a strategy for the promotion of labor-management cooperation programs at the workplace.¹⁸

But in 1981, Cabinet Bill No. 45 sought to amend provisions in Book V and included, among others, Section 12 on workers' participation and labor-management cooperation:

ART. 278. Workers participation and Labor-Management Cooperation. – (A) The Ministry shall promote and gradually develop, with the agreement of labor organizations and employers, industrial democracy and workers' participation in decision-making at appropriate levels of the enterprise based on shared responsibility and mutual respect in order to ensure a just and more democratic workplace and the improvement in working conditions and the quality of working life.

¹⁴ Omnibus Rules Implementing the Labor Code (as amended by Department Order No. 9, series of 1997), Book V, Rule XXI.

¹⁵ Department Order No. 40-03.

¹⁶ The certification requirement, of course, has given way to a mere registration procedure.

¹⁷ Policy Instruction No. 17 (1976).

¹⁸ LETTER OF INSTRUCTION NO. 688 (1978).

(B) In establishments with thirty (30) or more workers, and where no labor organization exists, the Ministry shall promote the creation of labor-management committees without restricting the workers' right to self-organization and collective bargaining for purposes of dealing with matters affecting labor-management relations like the promulgation and implementation of company rules, the threshing out of grievances and other matters of mutual interest to labor and management.¹⁹

Initially, there was a proposal by the Honorable Amado Inciong to delete Section 12.²⁰ He opposed the provision because his experience as Deputy Minister of Labor and Employment proved that labor-management cooperation schemes became channels of unfair labor practices.²¹ This point, however, was not pursued during the public hearing.

Another proposal that was discussed pertained to the fear that promotion of labor-management committees will operate as a coercive measure that will compel workers in non-unionized establishments to organize "State unions".²² It was clarified, however, that the bill only mandated the Ministry to promote the formation of labor-management committees, and that actual formation of LMCs was left to both labor and management.²³

To further emphasize the voluntary nature of such committees, the Committee on Labor, Employment and Manpower Development agreed to insert the word "help" between the words "shall" and "promote" and the phrase "on a voluntary basis" between "promote" and "creation". The Chairman of the Committee clarified that LMC is a "sort of umbrella for possibilities of innovative approaches to cooperation and harmony that will make use of the strike or lockout weapon less and less necessary."²⁴

¹⁹ Cabinet Bill No. 45, R.B. No. 96, 3rd Sess. (1981).

²⁰ Public hearing on C.B. 45, Committee on Labor, Employment, and Manpower Development, Batasang Pambansa, Army Navy Club, Manila (May 28, 1981).

²¹ *Id.*

²² Public hearing on C.B. 45, Committee on Labor, Employment and Manpower Development VIP Lounge, Batasang Pambansa (July 29, 1981).

²³ *Id.*

²⁴ *Id.*

At the floor of the Batasan, Assemblyman and bill sponsor Ople laid down the basis for the establishment of LMCs in unorganized establishments:²⁵

The committee thought that because 90% of the organizable work force, that is to say about 8 million workers in the wage and salary system throughout the country, is not yet organized, how can schemes of labor-management cooperation flourish unless we provide for the creation of a vehicle of cooperation short of forming a union? And the answer was: through the creation of labor-management committees without restricting the workers' right to self-organization and collective bargaining for purposes of dealing with matters affecting labor-management relations, like the promulgation and implementation of company rules, the threshing out of grievances and other matters of mutual interest to labor and management.

During the period of amendments, however, the recommended thirty-worker cut-off for establishment of LMCs was deleted.²⁶ Also, the role of the Ministry of Labor and Employment to promote the formation of LMCs in unorganized establishments was omitted.²⁷

Thus, in its final form Article 278 (g) and (h) of Batas Pambansa No. 130²⁸ reads:

The Ministry shall promote and gradually develop with the agreement of labor organizations and employers, labor-management cooperation programs at appropriate levels of the enterprise based on shared responsibility and mutual respect in order to ensure industrial peace and improvement in productivity, working conditions and the quality of working life.

In establishments where no labor organization exists, labor-management committees may be formed voluntarily by workers and employers for the purpose of promoting industrial peace.

²⁵ I RECORD OF THE BATASAN 148 (August 4, 1981).

²⁶ I JOURNAL OF THE BATASAN 85 (4th Reg. Sess., 1981-1982).

²⁷ *Id.*

²⁸ The law took effect on August 21, 1981.

The rules issued to implement Book V as amended by B.P. 130 mandated the employer to report to the DOLE the establishment of any labor-management committee within its enterprise as well as the activities undertaken by such committee from time to time and whenever required by the Department.²⁹

After the ratification of the 1987 Constitution, separate bills in the House of Representatives³⁰ and the Senate³¹ were filed to amend the provisions of Book V. In the original version of House Bill No. 11524, there were strong proposals relative to the implementation of the workers' right to participate in policy- and decision-making processes as guaranteed by the Constitution. There were original proposals to provide for workers' representation in the board of directors of a company with more than 100 employees.³² Also a profit-sharing scheme was put forward.³³ Both proposals, however, did not materialize.

But commitments to pursue labor-management cooperation persisted. In place of workers' representation in company boards, two proposals were suggested. The first was to provide worker representation in the corporate executive committee. The second involved the voluntary creation of labor-management committees. A consensus favored the second proposal. At the Conference Committee level, the provision mandating the DOLE to "enlighten and educate the workers and employers on their rights and responsibilities through labor education with emphasis on the policy thrusts of (the) Code" was added in anticipation of objections from unions regarding discouragement of formation of unions in unorganized establishments.³⁴

The present Book V provisions on labor-management cooperation as worded emerged from Republic Act No. 6715.

²⁹ Omnibus Rules Implementing the Labor Code, Book V, Rule XII (as amended 4 September 1981).

³⁰ House Bill No. 11524.

³¹ Senate Bill No. 530.

³² Section 15, H.B. 11524.

³³ Section 18, H.B. 11524.

³⁴ Bicameral Conference Committee on H.B. 11524 and S.B. 530 XIV-1 (December 15, 1988).

3. Work in Progress

Twenty-years after his prediction on the importance of participatory approaches in industrial relations, Gatchalian maintained that there is a "strongly felt need to further explore the area of employee representation in the Philippines."³⁵ He lamented that LMCs in the Philippines still largely function as consultative and advisory mechanisms, and that workers' representatives do not have substantial influence in managerial decision-making on more meaningful issues and concerns.³⁶ He might have referred to the broad spectrum of participatory modes ranging from information to consultation to co-decision and even full participation,³⁷ and how LMCs have failed to run through the gamut of levels of workers' participation.

An issuance by the Secretary of Labor and Employment clarified that labor-management cooperation could be undertaken: (a) as a tool for promoting non-adversarial and harmonious relationship between labor and management; (b) as a tool for both short-term and long-term conflict prevention and resolution; (c) complement or supplement, but not supplant collective bargaining, the dispute settlement machinery in place (eg. grievance machinery) or other mechanisms (eg. safety committees); (d) may be translated into programs mutually beneficial to labor and management such as schemes for enhancing enterprise and workers productivity, reducing wastage, improving the quality of goods and services, facilitating the acceptance of technological change and opening channels or venues for free communication.³⁸

Data from the National Conciliation and Mediation Board (NCMB) as of March 2002 reveals that there are a total of 639 LMCs existing in the country. This still represents a small amount compared to the vast number of unorganized establishments in the country.

³⁵ Jose C. Gatchalian, *Employee Representation and Workplace Participation: Focus on Labor-Management Councils*, 19-20 PHIL. J. OF INDUS. REL. 41, 46 (1999-2000).

³⁶ *Id.* at 49.

³⁷ Gatchalian and Dia, *supra* note 153, at 19.

³⁸ Department Order No. 21, series of 1988.

³⁹ Lorenzo B. Ziga, LMCs in the Philippines: Issues and Prospects, Paper presented in the Conference on the Century of Labor Struggle in Asia and the Pacific, Quezon City, November 28-29, 2002.

A landmark study in 1994 revealed that most LMCs did not have sufficient support from the management of the respondent companies. A key advocate of labor-management cooperation asserted that company support is a crucial factor in the success of LMCs.³⁹ The study suggested greater focus on productivity and quality improvement that must be taken by companies in their LMCs to broaden the scope of the same beyond mere conflict resolution or industrial relations concerns.⁴⁰

In the United States, various measures have been suggested to ensure worker protection against workplace cooperation efforts that manipulate employees' workplace governance choice. Several indicators for autonomous worker representation in these cooperative efforts have been mentioned, such as the following:⁴¹

- Team leaders-facilitators should be chosen by team members or by rotation from among team members, not appointed by upper management, and should be subject to recall.
- Team members should have the right to meet for specified periods at specified intervals, with pay, without the presence of managerial or supervisory representatives.
- Teams should have the right to meet, again at specified intervals and durations, with other teams, again without the presence of managerial or supervisory representatives.
- Individual team members should be entitled (on a rotating or lottery basis) to attend, or receive full minutes of, any meetings held between team leaders-facilitators as a group and managerial representatives.
- Teams should be entitled to specified periods of training – from trainers selected from the Participation Centers' labor-oriented consultants and educators – in technological and organizational design, group-process and problem-solving skills, ergonomics, and health and safety standards.

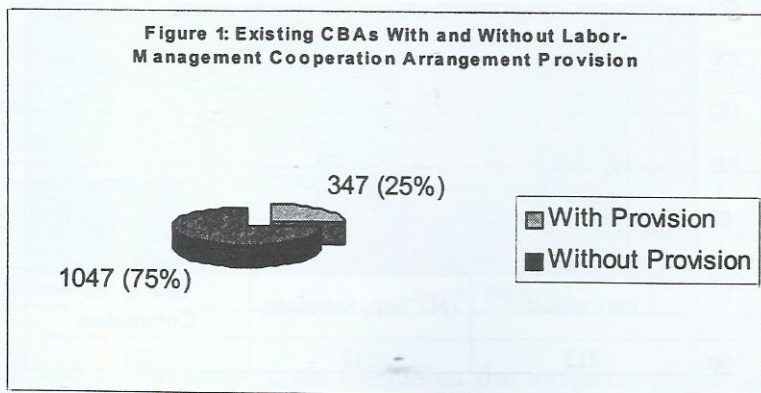
⁴⁰ *Id.*

⁴¹ Mark Barenberg, *Democracy and Domination in the Law of Workplace Cooperation: From Bureaucratic to Flexible Production*, 94 COLUM. L. REV. 758, 971 (1994).

Aside from undermining worker free choice, workplace cooperative efforts have the potential to unleash employer "opportunistic behavior". These may occur when: a) employees who have participated in cooperative programs are terminated; and b) the workplace cooperation program itself is terminated.⁴² Thus, the system could be authorized by a majority of employees by secret ballot; that before the ballot, employees were specially advised of their right to oppose the creation of such a plan without reprisal; that such authorization expires in some uniform period of time, perhaps three years, unless reauthorized; that the system may be abolished by a majority of employees in a secret ballot at any time; and that the system cannot at any time be unilaterally abolished by the employer.⁴³

4. Cooperative Schemes in Collective Agreements⁴⁴

There are 1,537 existing collective bargaining agreements (CBAs) registered with the Bureau of Labor Relations as of the third quarter of 2003. Of 1,394 (91%) that were analyzed, Figure 1 indicates that only 347 (25%) contain labor-management cooperation arrangements.



⁴² Rafael Gely, *Whose Team Are You On? My Team or My TEAM?: The NLRA's Section 8(A)(2) and the TEAM Act*, 49 RUTGERS LAW REV. 323, 381 (1997).

⁴³ *Id.* at 397, n. 389, citing Joel Rogers, *Reforming U.S. Labor Relations*, 69 CHI.-KENT LAW REV. 97, 114 (1993).

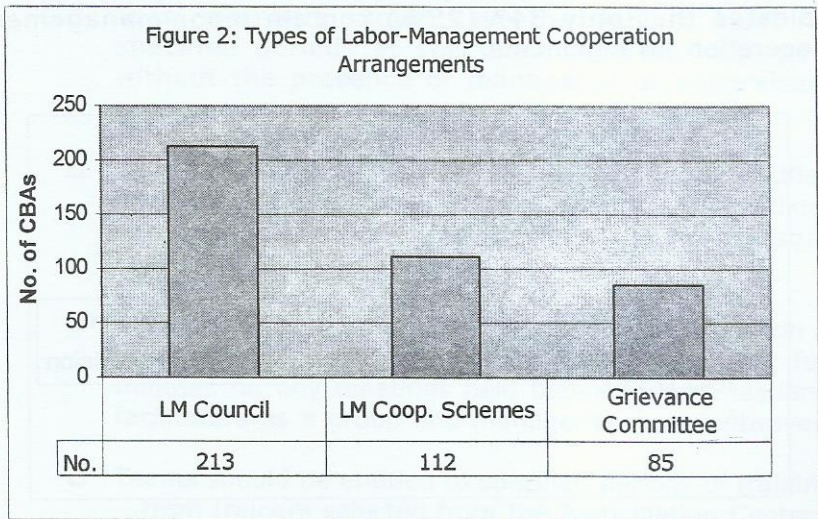
⁴⁴ The study on labor-management cooperation provisions in CBAs was written by Atty. Sherwin Lopez, BLR Med-Arbitrator. He was assisted in data gathering by Suzanne Rodriguez.

Figure 2 reveals that there are three identifiable types of labor-management cooperation arrangements found in the 347 CBAs. Most CBAs contain one of the three types of arrangements, while some have a combination of these types.

(a) Objectives

CBAs with LMCs have different objectives. Table 2 reveals that many have enumerated more than one objective for the establishment of the LMC.

Some 128 arrangements were created based on "other industrial relations issues". 47 (22%) CBAs stipulated that matters within the scope of the grievance machinery may be discussed in the LMC. In fact, six stated that it is a pre-condition that the grievance must first be raised before the LMC prior to elevation to the grievance machinery. On the other hand, 78 (37%) have expressly stated that the LMC does not have jurisdiction over issues within the jurisdiction of the grievance machinery.



Article 255 of the Labor Code provides that LMCs may be formed in connection with the right of workers to participate in policy- and decision-making processes. Only 13 (6%) have included this right of participation as one of the objectives of the LMCs. 83 (39%) of the CBAs have included information and communication as an LMC objective.

Table 2. Purposes of LMCs

Purpose	No. of CBAs	Purpose	No. of CBAs
Productivity	122	CBA-related matters	27
Occupational Health and Safety	45	Includes GM Subject Matters	47
Recreation	25	Complements GM	78
Family Planning	11	Policy and Decision Making	13
Education and Job Enrichment	31	Information and Communication	83
Company Rules	15	Other industrial relations issues	128

There are four objectives stated in the case of labor-management cooperation schemes, namely productivity, education, recreation/reduction of monotony of work and job enrichment. Table 3 reveals that these objectives constitute 102 (91%), 70 (62%), 58 (52%) and 66 (59%), respectively. The rest of the objectives are skills training, family planning, working conditions, CBA-related matters, communication and industrial peace.

Table 3. Purposes of Labor-Management Cooperation Schemes

Purpose	No. of CBAs	Purpose	No. of CBAs
Productivity	102	Working conditions	7
Education	70	CBA-related matters	2
Recreation/Reduction of Monotony of Work	58	Communication	1
Job Enrichment	66	Industrial peace	4
Skills Training	16	Family Planning	14

Article 260 of the Labor Code mandates the inclusion of grievance machinery provisions in the CBA. Although the Code does not specify the composition of the grievance machinery, 85 (24%) CBAs have indicated that the body would comprise representatives from labor and management. The statutory purpose of this body is to settle grievances arising from the interpretation or implementation of the collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies.

(b) Mechanics

In the CBAs studied containing LMC provisions, there were provisions that relate to the composition of the council, frequency of meetings, manner of selecting members, and the efficacy of decisions.

The study rated CBAs in terms of "potential efficacy". A CBA with "good potential efficacy" is defined as one that contains one or two of the four above-stated LMC mechanics for creation. Having one or two mechanics for creation can serve as impetus for the establishment of the council, giving rise to an institutionalized venue for the attainment of the objectives of LMCs. LMCs without such mechanics have no institutional support to pursue the said objectives. Thus, the effectiveness of CBAs that do not contain any of the mechanics for creation shall be deemed "uncertain". On the other hand, CBAs with three or more mechanics for creation shall be considered as having "better potential efficacy".

Table 4 shows that 171 (49%) CBAs have solely adopted the LMC set-up. Based on Table 5, 126 have "good potential efficacy". On the other hand, 31 have "better potential efficacy". And although the remaining 14 CBAs have stipulated the establishment of an LMC, these arrangements showed "uncertain potential" for efficacy.

Table 4. Number of CBAs per Type of Labor-Management Cooperation Arrangement

TYPES OF L-M COOPERATION ARRANGEMENT	No. of CBAs	Percentage
LMCs	171	49.28%
LABOR-MANAGEMENT COOP. SCHEMES (SCHEMES)	88	25.36%
GRIEVANCE COMMITTEES (GM)	26	7.49%
LMCs and SCHEMES	3	0.86%
LMCs and GMs	38	10.95%
SCHEMES and GMs	20	5.76%
LMCs, SCHEMES and GMs	1	0.29%
TOTAL	347	100.00%

Table 5. Number of Conditions in the 171 CBAs with LMC provisions

No of CBAs	No. of Conditions Found in the LMC Provisions				
	Zero	One	Two	Three	Four
	14	25	101	26	5

One of the major differences between the LMC and labor-management cooperation schemes is that the latter do not contain any of the four mechanics for LMC creation. For labor-management cooperation schemes, the agreement of the parties is merely to pursue such schemes. For this reason, the effectiveness of the 88 CBAs which contain solely the latter type of arrangement is considered uncertain.

In CBAs that combine labor-management cooperation schemes and LMCs, the effectiveness of the labor-management cooperation arrangements depend on the effectiveness of the LMCs. There are three CBAs which contain these two types of arrangements. Based on Table 6, a review of these CBAs reveal that all of its LMC provisions each have two mechanics for creation. Hence, the labor-management cooperation arrangements contained in these CBAs have "good potential efficacy".

Table 6. CBAs with LMC and Labor-Management Cooperation Schemes

No. of CBAs	No. of LMC CONDITIONS				
	None	One	Two	Three	Four
	0	0	3	0	0

All CBAs that adopted the grievance committee mode of labor-management cooperation have provided a detailed procedure of the grievance machinery, as well as the composition of the committee. The frequency of the meetings of the committee would depend on the existence of grievances presented before the committee. Hence, all grievance machineries have "better potential efficacy". The effectiveness is not limited to the 26 CBAs that contain only grievance committees, but to other CBAs that have combined grievance with either LMCs or labor-management cooperation schemes. Hence, the 38 CBAs which contain LMC and grievance committee types and the 20 CBAs which contain labor-management cooperation schemes and grievance committee, and the lone CBA which contain all three types of arrangements, have "better potential efficacy".

(c) Prospects for Cooperation in Unionized Establishments

There is hope for workplace cooperation in a unionized environment. 33.43% of cooperative arrangements have "better potential" for efficacy or realization. Together with those comprising "good potential efficacy" (37.18%), there is an overwhelming 70.6% of CBAs with cooperative arrangements that have the capacity to be effective (See Table 7).

All told, there is still an astounding number of collective agreements (75% of CBAs in the study) that have no cooperative arrangements at all. Whether this is due to a continued skepticism on either side should be the subject of future research, or should form part of the DOLE's efforts to encourage labor-management cooperation in the workplace.

Like its counterpart in the non-unionized formal sector, labor-management cooperation in unionized establishments, too, is a work in progress.

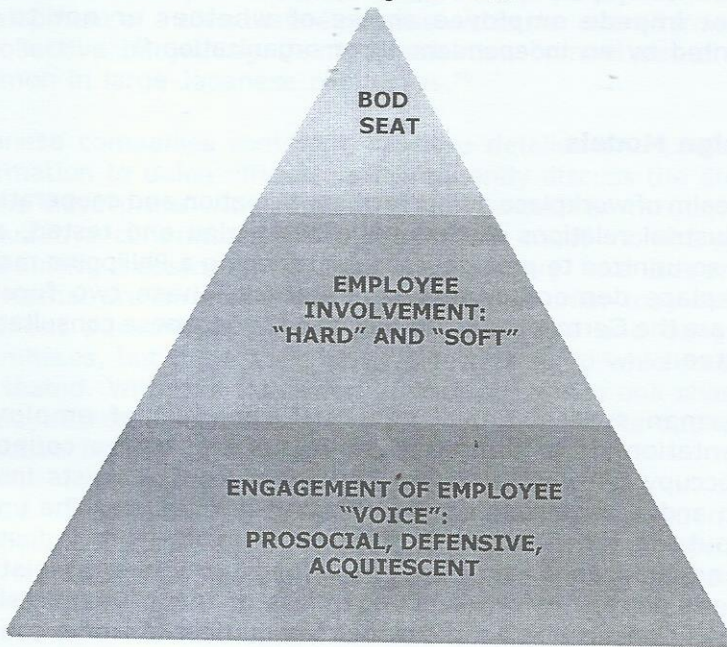
Table 7 - Effectiveness of each Type of Labor-Management Cooperation Arrangement

TYPE OF L-M COOPERATION ARRANGEMENT	EFFICACY			TOTAL
	UNCERTAIN	GOOD POTENTIAL	BETTER POTENTIAL	
LMCs	14	126	31	171
L-M COOPERATION SCHEMES	88			88
GRIEVANCE COMMITTEES			26	26
LMCs & L-M COOP. SCHEMES		3		3
LMCs & GRIEVANCE COMM.			38	38
L-M COOP SCHEMES & GRIEVANCE COMMITTEES			20	20
LMCs, L-M COOP SCHEMES & GRIEVANCE COMMITTEES			1	1
	102 (29.39%)	129 (37.18%)	116 (33.43%)	347

4. Tiers of Workplace Democracy and Cooperation

Integrating all forms of workplace democracy, ranging from engagement of employee "voice" to board of directors (BOD) representation, creates a new face for labor relations in the formal sector. Figure 3 illustrates these forms in different levels.

Figure 3. Tiers of Workplace Democracy and Cooperation in the Unorganized Sector



The three layers involve possible HRD interventions in unorganized establishments. The most basic tier involves traditional personnel and new HRD approaches to employee exercises of "voice". The second tier pertains to employee involvement that covers participatory and representative programs (e.g. "teams") aimed at bringing workers into the decision-making process. The final tier represents the "aspiration" by the framers of the 1987 Constitution — membership in corporate BOD or participation of workers in corporate policy planning and development. The challenge is to determine whether we have "evolved" towards the direction of BOD workers' representation, or whether we could develop a model that represents the broad expanse of employee involvement mechanisms covering the unorganized workforce. Such EI mechanisms must guarantee "autonomous" worker choice and revention of employer opportunistic behavior.

In 1994, then United States President Bill Clinton created a Commission on the Future of Worker-Management Relations, the so-called "Dunlop Commission". Its task was to review the current state of US worker-management relations. In its Final Report, the

Commission believed that it is "in the national interest to promote expansion of employee participation," provided that such a goal does not impede employee choice of whether or not to be represented by an independent labor organization.⁴⁵

5. Foreign Models

In the realm of workplace democracy, participation and cooperation, two industrial relations models have been tried and tested, and may be scrutinized to provide lessons in shaping a Philippine model of workplace democracy and cooperation. These two foreign models are the German works council and the Japanese consultation committee.

The German system deals with dual channels of employee representation. It is composed of unions and works councils, which occupy different spheres. The works council exists inside the firm and is concerned chiefly with firm-level issues. The union exists outside the firm and is concerned chiefly with industry-level and macroeconomic issues. Works councils consist of employees elected by workers regardless of union membership. The Works Constitution Act prescribes the number of works council members based on the size of the work force.⁴⁶

Müller-Jentsch enumerates the characteristics of a works council as follows: (a) encompassing – the works council represents and is elected by all workers and salaried employees; (b) representative – the works council formulates its demands in the name of the employees; and (c) mandatory – the works council is a legal institution.⁴⁷ In general, a works council's participation rights are strong in social matters, less strong in personnel matters, and relatively weak in financial and economic matters.⁴⁸

On the other hand, the Japanese system involves unions organized on a company basis, rendering it less centralized than the German model. Although not required by law, the practice in Japan is for

⁴⁵ Report and Recommendations, Committee on the Future of Worker-Management Relations (1994).

⁴⁶ Janice R. Bellace. *The Role of the Law in Supporting Cooperative Employee Representation Systems*, 15 COMP. LAB. L.J. 441, 443, 445 (1994).

⁴⁷ Walter Müller-Jentsch. *Re-assessing Co-determination*, *The Changing Contours of German Industrial Relations* 39, 46 (2003).

⁴⁸ *Id.* at 48.

one union to bargain with one company.⁴⁹ One major difference between the Japanese and the Philippine system is the development of a consultative process within the overall framework of collective bargaining. Joint consultation committees are very common in large Japanese companies.⁵⁰

Japanese companies commonly disclose detailed and confidential information to union officials, and frequently discuss the direction of the enterprise with workers' representatives through such consultative committees.⁵¹ The committees meet months prior to bargaining sessions, so that cooperative and adversarial approaches are chronologically separated. The union may designate different persons to sit on the consultative and bargaining committees, but there is no general pattern as to which members are seated. With this framework, Japan possesses one channel of employee representation that performs both works council and collective bargaining functions.⁵²

These arrangements need to be scrutinized as to nature, composition, purpose, and efficacy, with a view to improving our own workplace democracy and cooperation arrangements.

CONCILIATION AND MEDIATION

Book V's substantive provisions open with the State's compulsory arbitration machinery, administered by the National Labor Relations Commission (NLRC) and the Bureau of Labor Relations (BLR).⁵³ This bias towards compulsory arbitration was established as far back as 1936 with Commonwealth Act No. 103, supposedly restricted by collective bargaining through Republic Act No. 875, and discouraged by its omission in the dispute settlement policy in Section 3, Article XIII of the 1987 Constitution.

But compulsory arbitration remains the top dispute settlement option. In the first half of 2003, cases in the NLRC regional arbitration branches (RABs) totaled 29,640. Appealed cases to the Commission amounted to 9,711, bringing the total number of

⁴⁹ Bellace, *supra* note 195, at 450.

⁵⁰ *Id.* at 451.

⁵¹ *Id.* at 452.

⁵² *Id.*

⁵³ Book V opens with the declaration of state policies and definition of terms before proceeding to the NLRC and the BLR.

NLRC cases to a whopping 39,351. Of these 10,260 were disposed, for a 26% disposition rate.⁵⁴ Concrete efforts by Chairman Roy Señeres to highlight conciliation and mediation at the preliminary conference level have relieved the caseload, but without a proper administrative conciliation and mediation machinery supporting the NLRC, cases will continue to hound its existence. Between the first half of 2002 and the first half of 2003, for instance, there were 809 more cases filed, projecting a 5% increase at year's end.

Be that as it may, the NLRC has doubled the amount of benefits awarded to workers, from P2,762,600 in 2002 to 4,609,800 as of the first half of 2003.⁵⁵

On the other hand, the main conciliation and mediation service of the DOLE, the National Conciliation and Mediation Board (NCMB), managed to maintain a 90.3% disposition rate pertaining to strike and lockout notices in 2002, and managed to keep strikes down to 36,⁵⁶ a twenty-five year low.⁵⁷ These numbers are astounding, considering there were only 40 assumed or certified cases for compulsory arbitration, and 570 settled through the efforts of NCMB conciliators.⁵⁸

Success in conciliation efforts is not confined to the Philippines alone. Malaysia, for instance, has reported that 80% of disputes filed before its Industrial Relations Department are resolved through conciliation. Singapore also has a proud tradition of conciliating labor disputes.⁵⁹

TRIPARTISM

Tripartism allows workers and employers to be represented in decision and policy-making bodies of the government. The Secretary of Labor and Employment is also given the authority to call national, regional, or industrial tripartite conferences for the

⁵⁴ FACTBOOK, *supra* note 77, at 38.

⁵⁵ *Id.*

⁵⁶ *Id.* at 35.

⁵⁷ There were 33 actual strikes in 1977. DEJILLAS, *supra* note 85, at 34.

⁵⁸ FACTBOOK, *supra* note 77, at 35.

⁵⁹ Country Papers, Regional Policy Workshop on Fundamental Framework of Industrial Relations and Legislation, Tokyo, Japan, July 8-9, 2003.

consideration and adoption of voluntary codes of principles designed to promote industrial peace based on social justice or to align labor movement relations with established priorities in economic and social development.⁶⁰

During the Martial Law era, several tripartite conferences were called to discuss labor and employment issues. Tripartism was institutionalized when President Corazon Aquino issued Executive Order No. 403, series of 1990, and created a Tripartite Industrial Peace Council (TIPC) with a three-fold purpose: (a) monitor full implementation with the provisions of the industrial peace accord (IPA); (b) assist in the preparation and conduct of national tripartite conferences; and (c) formulate tripartite views on labor and social concerns. The members of the Council were the Secretary of Labor and Employment as Chairman, and twelve representatives each from the labor and management sectors.

Two years later, President Fidel Ramos issued Executive Order No. 25, series of 1992, which reconvened the TIPC and maintained its functions and membership. To carry out the provisions of E.O. 25, then Secretary of Labor and Employment Nieves R. Confesor issued Department Order No. 8, series of 1995, which laid down guidelines for the constitution and institutionalization of national industry councils, regional tripartite industrial peace councils, and regional or local industry tripartite councils under the national tripartite council.

President Ramos later amended E.O. 25 and issued Executive Order No. 383, series of 1996. Government representation in the TIPC included the Department of Trade and Industry (DTI), Department of Interior and Local Government (DILG), and the Director-General of the National Economic and Development Authority (NEDA). E.O. 383 also incorporated the industrial and regional tripartite council framework initially established by Secretary Confesor.

Under E.O. 383, the Council's functions included the following: (a) monitoring full implementation and sectoral compliance with the provisions of all international conventions, tripartite agreements and commitments; (b) assisting in the preparation and conduct of national, regional or industry-specific tripartite conferences; (c) reviewing existing labor, economic and social policies and to

⁶⁰ BOOK V, TITLE IX, ART. 275.

evaluate local and international developments affecting them; (d) formulation of tripartite views, recommendations and proposals on labor, economic and social concerns; (e) advise the Secretary of Labor and Employment in the formulation or implementation of major policies; and (f) serve as a joint communication channel and a mechanism for undertaking joint programs.

President Joseph Estrada later issued Executive Order No. 49, series of 1998, which reconstituted and expanded the members of the TIPC, to include more heads of executive departments or agencies, as well as increase the number of sectoral representatives to twenty each. The regional and industrial tripartite framework was maintained. On Labor Day five months later, President Estrada issued Executive Order No. 97, series of 1999, to include overseeing the medium-term comprehensive plan as a basic function of the TIPC.

In 2001, President Gloria Macapagal-Arroyo reconvened the TIPC, which maintains its nature, functions and composition under E.O. 49 and E.O. 97. The National TIPC has been responsible for the enactment of various DOLE regulations on labor relations, contractualization, employment in security agencies, health and safety, child labor, and overseas employment.

Six industrial councils exist, representing the banking, construction, automotive assembly, sugar, hotels and restaurants, and garment sectors. There are regional tripartite councils all over the country, including several provincial councils created through local ordinance, such as the Laguna Labor Management Council, pursuant to Provincial Ordinance No. 822, series of 1998.

In an International Labor Organization (ILO) study on tripartism in the Philippines, Fashoyin raised the possibility of bringing the decent work agenda to the TIPC. He also pointed out the need to effectively transmit national TIPC decisions at the relevant lower levels. He exhorted tripartite partners to include civil society representatives within the scope of TIPC representation, and to keep tripartism relevant.⁶¹

⁶¹ Tayo Fashoyin. Working Paper on Social Dialogue and Labour Market Performance in the Philippines, 49-52 (2003).

THE COURTSHIP RITUAL

With the advent of labor-management cooperative efforts and the re-emergence of mutual aid, not to mention the continuing growth of an unorganized and informal segment of the labor market, has Philippine industrial relations "evolved" enough to bring about the type of change envisioned by the framers of the Constitution? We need not delve into a debate on representation of workers in corporate boards of directors, but we may rethink the current industrial relations model through the lens of basic notions of workplace democracy and cooperation, notions that easily become relevant at the enterprise level even before thoughts of unionization emerge.

To rethink the current industrial relations model, we could start with dream of a wedding – the marriage between human resource development and industrial relations.

In the marriage between human resource development and industrial relations, a courtship or "paninilbihan" must commence. Dr. Penelope Flores of San Francisco State University has emphasized the importance of "filling up the tapayan" in true Filipino "paninilbihan" tradition, where the "tapayan" stands as a positive conduit of communication. This fusion of HRD and IR in the law "to be filled" must come with discourse and discussion in the free market of ideas to adequately create a Book V for the new millennium.

In this courtship dance, a proposal for consideration by all stakeholders in labor relations is hereby put forward. In view of the preservation of a strong collective bargaining flavor in House Bill Nos. 5996 and 6031, a new approach could be forthcoming. A possible configuration could be as follows:

- a) *Chapter One, State Policy.* Emphasizing not just a declared policy of collective bargaining to cover a small percentage of the Philippine labor force, but a framework of workplace democracy and cooperation that will promote harmonious relations between and among workers, and between workers and management. The foundation shall be the workers' right to self-organization, the method is workplace democracy and cooperation and collective bargaining, and the goal is industrial peace.

- b) *Chapter Two, Definition of Terms.* To include a definition of groups, teams, associations, or committees that function within the realm of workplace democracy and cooperation, as well as tripartism.
- c) *Chapter Three, Workplace Democracy and Cooperation.* Providing a framework for workplace relations prior to or in the absence of union representation, with guidelines to be observed in terms of nature, functions, composition, and other mechanics of institutional workplace cooperation. This shall also include mutual aid organizing to cover the expansion efforts of unions and workers across occupational, geographical, or "social movement" lines.
- d) *Chapter Four, Tripartism.* Enhancing efforts to forge policy and decision consensus among social partners in the regional, industrial, and national levels.
- e) *Chapter Five, Collective Bargaining.* Upholding the right to self-organization, prohibiting unfair labor practices. Continued pursuit of a fair and expeditious administrative machinery for union and CBA registration, determination of representation status, collective bargaining and strikes and lockouts.
- f) *Chapter Six, Special Provisions on Informal Sector and Rural Workers.* Dealing with organizational matters, as well as mechanisms to encourage self-entrepreneurship, uphold financial sustainability, and provide opportunity for political representation.
- g) *Chapter Seven, Dispute Settlement.* Establishing a primary conciliation and mediation machinery prior to adjudication or arbitration, as well as administrative or jurisdictional amendments to address the caseload of the NLRC.

This framework adheres to the view that the current system does not adequately cover all Filipino workers, and that the current system of collective bargaining could best be supported or complemented by less adversarial modes of workplace democracy and cooperation.