Cancellation of Union Registration as a Battlefield in Labor-Management Relations

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Resurgent Adversarial Relations

Allow me to begin with a fearless forecast. I dare say that in the bicentennial of the Philippine labor movement, labor unions will be judged by their contributions to a lasting industrial peace. Prevailing political and economic conditions call for collective cooperative efforts by all social partners to keep us afloat and moving in the perilous waters of globalization. The first 100 years of the Philippine labor movement were highlighted by the political and economic struggles for the Filipino worker against the ill effects of colonial rule and self-government. The next 100 years will be marked by political and economic struggles of the entire Filipino nation to survive in the world economy.

Simply put, if the social partners do not get their acts together, the harsh consequences shall be political and economic instability. Our ship will collapse, and we will drown. The gains achieved by 100 years of Philippine unionism shall have been for naught

The groundwork for an atmosphere of collective cooperative efforts have been laid. Tripartism is the mechanism installed to create mutually acceptable minimum terms and conditions of employment and ground rules for labor-management relations. The originally adversarial realm of collective bargaining has been enhanced by exclusivity in bargaining agent status, the contract bar rule, the creation of regional tripartite councils, advocacy for labor-management councils, emphasis on the doctrine of shared responsibility and voluntary modes of settling disputes.

In the field of dispute settlement, unionized establishments are encouraged to settle their disputes through the collective bargaining agreement, grievance machinery and voluntary arbitration. In cases when an employer or legitimate labor organization violates the right to self-organization, the compulsory arbitration system administered by the National Labor Relations Commission (NLRC) shall come into play. In issues surrounding the legality or illegality of a strike or lockout, the jurisdiction of the NLRC

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be invoked. And if the strike or lockout involves an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute.

This framework is related to what Prof. Elias Ramos calls the most salient feature of Philippine labor relations law, i.e., voluntary bilateralism or the declaration of a labor policy emphasizing the importance of placing heavy reliance upon the voluntary evolution of workable and viable labor-management relationships.

Generally, cooperative efforts between the union and management are only hindered in cases when there is a CBA deadlock or interference with the right to self-organization. Otherwise, conciliation, grievance machinery, and voluntary arbitration options, alongside tripartism, underscore the need to transcend adversarial collective bargaining.

But with the 1992 Supreme Court ruling in *Progressive Development Corporation vs. Secretary of Labor and Employment,* a new brand of legal arsenal was created to combat the creation of legitimate labor organizations.

Under the paradoxical misnomer that is the *Progressive Development Corporation* ruling, the Court allowed a collateral attack on the existence of a union during petition for certification election proceedings, and long after the union acquired its certification of registration from the Department of Labor and Employment.

This decision opened the floodgates to a deluge of litigious pleadings in certification election proceedings designed to question the legitimacy of a union seeking bargaining representation. All of a sudden, mediation-arbiters who handle petitions for certification election were embroiled in meticulous, evidentiary scrutiny of union registration documents, a deviation from the primordial issue of whether an election to choose a collective bargaining representative shall be conducted in an establishment.

In April 1997, the Supreme Court followed up the 1992 ruling with the promulgation of its decision in *Progressive Development-Pizza Hut vs. Laguesma.* In line with the concern over the legitimacy of a petitioning union in certification election proceedings, the Court held that the pendency of a petition to cancel union registration involving the petitioning union is a prejudicial question that will suspend certification election proceedings.

Two months later, on 21 June 1997, the Secretary of Labor and Employment issued Department Order No. 9, series of 1997, which amended the rules on union and CBA registration, certification elections, intra-union disputes, grievance machinery and voluntary arbitration, strikes and lockouts, and security of tenure.

Department Order No. 9 clearly established that collateral attacks on union registration during certification election proceedings are prohibited. While this could have negated the 1992 *Progressive*

Development ruling, the effect of *Progressive Development-Pizza Hut* in 1997 was a heightened adversarial culture between the union and management at the time of registration and certification election.

Also in line with the 1992 *Progressive Development* ruling is the February 1997 decision in *Toyota Motor Philippines vs. Toyota Motor Philippines Labor Union,* where the Court declared that the mixture of rank-and-file and supervisory employees in a rank-and-file union will render the said union legally non-existent.

After 1997, there has been a marked increase in petitions for cancellation of union registration, from 19 in 1998 to 54 in 2001 and 51 as of October 2002. You will also note that the increasing trend is inversely proportional to the decreasing trend in petitions for certification election filed during the same period (See Tables 1 and 2).

Table 1. PETITIONS FOR CANCELLATION FILED, 1998 – OCT. 2002

Year	Number of Cases Filed
1998	19
1999	13
2000	31
2001	54
Oct 2002	51

Table 2. PETITIONS FOR CERTIFICATION ELECTION FILED, 1999 – OCT. 2002

Year	Number of Cases Filed
1999	257
2000	180
2001	176
Oct 2002	171

The message from employers who have commenced petition for cancellation proceedings embodies a clear distrust in the manner in which respondent unions have been organized, if not an overall distrust in unionism *per se*.

If nothing is accomplished by way of reversing this increasing trend of petitions for cancellation, voluntary bilateralism will continue to be undermined by this highly adversarial response to unionization.

Interpretation of the Law on Cancellation of Union Registration

Cancellation of union registration cases are filed with the regional offices of the Department of Labor and Employment. Appeals are brought before the Bureau of Labor Relations, which has developed doctrines relative to interpretation of Article 239 of the Labor Code. Article 239 provides the grounds for cancellation of union registration.

In the area of fraud and misrepresentation - the most common ground invoked in petitions for cancellation - the Bureau has been consistent in its pronouncements on the matter. The kind of fraud and misrepresentation sufficient to warrant the extinction of the life of a legitimate labor organization must (a) be grave and compelling; (b) be practised upon a majority of the union membership; (c) carry an intent to deceive; (d) be proven by substantial evidence.

With regard to non-compliance with the reportorial requirements, the Bureau has emphasized that these matters are proper subjects of a disciplinary action against the erring union leadership. Obliteration of the union in the roster of legitimate labor organizations would be too harsh.

As for the mixture of rank-and-file employees and supervisory/ managerial employees in one union, suffice it to state that the Bureau of Labor Relations has adhered to the line of decisions starting from *Lopez vs. Chronicle Publication Employees Association* in 1964, to *PT & T vs. Laguesma* in 1993, to *SPI Technologies vs. Department of Labor and Employment* in 1999. These cases emphasized that the presence of ineligible union members does not render a union legally inexistent, because the rule in Article 245 of the Labor Code is merely a rule on membership eligibility, and not a ground to cancel union registration. The remedy in such cases of mixture in union membership is to raise the same during inclusion-exclusion proceedings at the pre-election conference before a certification election officer.

The Bureau has also affirmed the Supreme Court pronouncement as far back as *National Union of Bank Employees vs. Minister of Labor* in 1981, i.e., the mere pendency of a petition for cancellation of union registration will not suspend certification election proceedings, effectively negating *Progressive Development-Pizza Hut.*

These interpretative rulings have historical and contextual bases. Historically, laws on registration of labor organizations entail measures to de-register them. After the 1935 Constitution committed the State to "afford protection to labor," Commonwealth Act No. 213 in 1936 required all labor unions to register with the Department of Labor. The law also provided that no labor organization shall be denied registration, except when its object was to undermine and destroy the constituted government or to violate any law or laws of the Commonwealth Republic. Any permit issued by the Secretary of Labor lasted only two years from date of issuance. Thereafter, the permit

may be renewed but only upon payment of a renewal fee and upon presentation by the union of its books and other records for examination.

With the advent of collective bargaining in the Industrial Peace Act of 1953, mechanisms for union registration and cancellation *ex parte* and *pro parte* were installed. Under cancellation *ex parte* proceedings, the Department of Labor shall automatically cancel or refuse registration to a union finally declared to be a company union. In *pro parte* proceedings, a registration permit may be canceled if the labor organization did not meet one or more of the requirements or failed to file either the union's financial report within 60 days at the end of the fiscal year, or the names of new officers along with their non-subversive affidavits within 60 days after election.

Under the Labor Code enacted in 1974, the Bureau shall cancel union registration based on the grounds under Article 239 if, after due hearing, it has reason to believe that a labor organization "no longer meets one more of the requirements herein prescribed."

The ascertainment of a "reason to believe" has given the Bureau an area of quasi-judicial discretion to interpret the law on union cancellation in a manner conducive to the right to self-organization in relation to ILO Convention No. 87.

In 1953, the Philippine government ratified ILO Convention No. 87, which guarantees workers the following rights: (a) the right to establish and join organizations of their own choosing; (b) the right to draw up their constitution and rules; (c) the right to elect their representatives in full freedom; and (d) the right to establish and join federations and confederations. Because our Constitution adopts generally accepted principles of the international community, the ratified provisions of this treaty form part of the law of the land.

In addition, Article 4 of ILO Convention No. 87 states that "workers and employers' organizations shall not be liable to be dissolved or suspended by administrative authority." This provision, however, does not grant organizations immunity with regard to national law. Under Section 1, Article 8, such organizations are bound to respect the law of the land. The corollary of this obligation imposed on organizations and their members is that, under Section 2, Article 8, "the law of the land shall not be such as to impair, nor shall it be so applied as to impair the guarantees provided for in the Convention."

Using Section 2, Article 8 of ILO Convention No. 87 as a tool of statutory construction, the Bureau has interpreted Article 239 in such a way that it does not impair the guarantees provided under the Convention.

Efficacy of BLR Rulings

Between 1998 and 2001, the Bureau has reversed 34 orders of cancellation of union registration from the regional offices. A study of the post-reversal status of the 34 unions involved reveals that only

three eventually entered into CBAs with management. One petitioner-company even ceased operations, while one union is currently on strike. Most have been either awaiting the conduct of a certification election or commencement of collective bargaining negotiations.

On the other hand, further study into the status of 32 affirmed dismissals of petitions for cancellation by the regional offices reveals that only two unions managed to conclude a CBA with its employer.

Petitions for cancellation have indeed slowed the wheels of the collective bargaining process.

In the House of Representatives, House Bill No. 5226 filed by Reps. Del De Guzman and Etta Rosales, due for second reading, proposes to delete fraud and misrepresentation as grounds for cancellation of union registration. As for the reportorial requirements, the bill suggests that failure to comply with them means suspension or expulsion from membership on the part of the erring officer or member.Senate Bill 2320 filed by Sen. Francis Pangilinan proposes to convert Article 239 into grounds to dismiss erring officers or members.

Action on these proposed measures remains to be seen. What is clear is that petitions for cancellation are only a manifestation of a propensity to resist unionization. With an increasing trend in petitions for cancellation filed every year, could this mean an increasing trend in resisting unionization in the face of globalization?

Do the BLR rulings that give considerable weight to the right to self-organization contribute to employer perception of fraud and misrepresentation and irresponsibility in Philippine unionism, thereby maintaining an increasing trend of union resistance?

Given the emphasis on collective cooperative efforts among the social partners, is the trend on increasing petitions for cancellation indicative of a resistance on collective bargaining as a framework of labor-management relations?

Should cancellation of union registration be correlated with the failure of union leaders to comply with reportorial requirements imposed by law? For instance, in the ongoing review of the rules implementing Book V of the Labor Code, there is a proposal to recognize the BLR's authority to administratively cancel union registration when a union has failed to comply for a continuous period of five years. Would such a system of administrative cancellation be viable?

These are questions that the social partners must resolve, and resolve soon.