

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

THIRTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 3627

***Introduced by Akbayan Representatives Mario "Mayong" Joyo Aguja,
Loretta Ann P. Rosales and Ana Theresia Hontiveros-Baraquel***

Explanatory Note

The rights of workers to self-organization and to engage in peaceful concerted action are two of the most fundamental principles that underlie the Philippine legal framework governing labor relations. The importance given to these two concepts springs from the recognition that the only way to ensure that workers truly enjoy their human rights to just and favorable conditions of work and to fair and adequate remuneration, is to allow them to assert these rights with the strength of a united and collective voice.

These rights are enshrined in no less than the Philippine Constitution, the highest law in the land, where it is declared in Article XIII, Section 3 that "[the State] shall guarantee the rights of all workers to self-organizations, and peaceful concerted activities, including the right to strike in accordance with law."

In this, our Constitution mirrors and applies to the Philippine context Article 23 of the Universal Declaration of Human Rights, which asserts that "everyone has the right to form and to join trade unions for the protection of his interests."

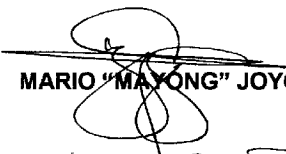
These mandates contained in the Constitution and found under international law are given specific application in the provisions of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines. The Labor Code lays down a system of rules by which the rights to self-organization and to peaceful concerted activities can be validly exercised as well as effectively protected.

The passage of years and the actual experience of workers and trade unions in collectively asserting their interests have, however, revealed certain difficulties and inadequacies in the prevailing framework of the Labor Code.

Oftentimes, these shortcomings in the statute have hindered the complete fulfillment of the fundamental rights enshrined in the Constitution, recognized under international human rights law, and which form the firm and essential basis for our system of labor relations.

It is time that the letter of the law be modified to more adequately reflect the spirit of the rights it has been crafted to implement.

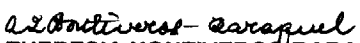
To this end, the following enactment is proposed, amending in part Presidential Decree No. 442 with the aim of strengthening the implementation and observance of these fundamental rights.



MARIO "MAYONG" JOYO AGUJA



LORETTA ANN P. ROSALES



ANA THERESIA HONTIVEROS BARAQUEL

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AN ACT
STRENGTHENING RIGHTS RELATING TO TRADE UNION ACTIVITIES,
AMENDING FOR THE PURPOSE ARTICLES 263 AND 264 OF
PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN
AS THE LABOR CODE OF THE PHILIPPINES

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

SECTION 1. Article 263 of Presidential Decree No. 422, as amended, otherwise known as the Labor Code of the Philippines is hereby amended to read as follows:

"ARTICLE 263. *Strikes, picketing and lockouts* – (a) It is the policy of the State to encourage free trade unionism and free collective bargaining.

(b) Workers shall have the right to engage in concerted activities **INCLUDING THOSE** for purposes of collective bargaining or for their mutual benefit and protection. The right of legitimate labor organizations to strike and picket, and of employers to lockout, [consistent with the national interest,] shall continue to be recognized and respected. However, no labor union may strike and no employer may declare a lockout on grounds involving inter-union and intra-union disputes.

(c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Department. [at least thirty (30) days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be fifteen (15) days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of

dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.]

(d) DELETED

(e) DELETED

(d) [(f)] A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by **A majority of the [board of directors] STOCK HOLDERS** of the corporation or **MEMBERS OF THE** association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. [The Department may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the Department the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided.]

(e) [(g)] When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout **IN HOSPITAL, ELECTRICAL AND WATER SERVICES**, [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 locked out 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. **MERE REINSTATEMENT OF AN EMPLOYEE IN THE PAYROLL SHALL NOT BE CONSIDERED AS SUFFICIENT COMPLIANCE WITH THIS REQUIREMENT.** 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 and 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 a 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 locking-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 labor dispute in such industries in order to settle or terminate the same.]

(f) [(h)] [Before or at any stage of the compulsory arbitration process, the] **THE** parties may opt to submit their dispute to voluntary arbitration.

(g) IN AN ACTUAL STRIKE OR LOCKOUT IN A SMALL OR MEDIUM ENTERPRISE (SME), THE SECRETARY SHALL ASSUME JURISDICTION UPON THE REQUEST OF EITHER PARTY INVOLVED IN THE DISPUTE. SUCH ASSUMPTION OF JURISDICTION SHALL HAVE THE SAME EFFECTS AS THOSE PROVIDED UNDER PARAGRAPH (e) OF THIS ARTICLE.

(h) [(i)] The Secretary of Labor and Employment [, the Commission or the voluntary arbitrator or panel of voluntary arbitrators] shall decide or resolve the dispute within thirty (30) calendar days from the date of the assumption of jurisdiction [or the certification or submission of the dispute, as the case may be]. The decision of [the President,] the Secretary of Labor and Employment [, the Commission or the voluntary arbitrator or panel of voluntary arbitrators] shall be final and executory ten (10) calendar days after receipt thereof by the parties.

(i) WORKERS, THROUGH THEIR UNIONS, HAVE THE RIGHT TO REFUSE TO HANDLE MERCHANDISE OF/FOR, OR PROVIDE/RECEIVE A SERVICE TO, ANY COMPANY WITH AN ONGOING LABOR DISPUTE.

(j) ALL WORKERS SHALL BE ENTITLED TO RECEIVE THE FULL AMOUNT OF THEIR REGULAR WAGES FROM THEIR EMPLOYER FOR THE ENTIRE DURATION OF ANY STRIKE OR LOCKOUT."

SECTION 2. Article 264 of the Labor Code is hereby amended to read as follows:

"ARTICLE 264. Prohibited activities. — (a) No labor organization or employer shall declare a strike or lockout without first having bargained collectively in accordance with Title VII of this Book **EXCEPT IN THE CASE OF STRIKES AGAINST UNFAIR LABOR PRACTICE BY THE EMPLOYER.** [or without first having filed the notice required in the preceding Article or without the necessary strike or lockout vote first having been obtained and reported to the Department.]

No strike or lockout shall be declared after assumption of jurisdiction by the [President or the] Secretary [or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases] involving the same grounds for the strike or lockout.

Any worker whose employment has been terminated as a consequence of an unlawful lockout shall be entitled to reinstatement with full backwages. **ANY EMPLOYER FOUND GUILTY OF ILLEGAL LOCKOUT SHALL INCUR CRIMINAL LIABILITY AS PROVIDED FOR UNDER ARTICLE 272 OF THIS CODE.** Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment right: Provided, That mere participation of a worker in a [lawful] strike, **WHETHER LAWFUL OR NOT,** shall not constitute sufficient ground for termination of his employment[, even if a replacement had been hired by the employer during such lawful strike]. **IF AN EMPLOYER, HIS OR HER AGENTS, REPRESENTATIVES, OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT ON HIS OR HER BEHALF, SHOULD COMMIT A CRIME DURING A STRIKE OR ANY OTHER CONCERTED ACTION BY WORKERS, THE SAME SHALL BE CONSIDERED AN AGGRAVATING CIRCUMSTANCE IN DETERMINING THE APPROPRIATE PENALTY TO BE IMPOSED ON SUCH PERSON FOR THE COMMISSION OF SAID CRIME.**

(b) No person shall obstruct, impede or interfere with, **ESPECIALLY** by force, violence, coercion, threats or intimidation, any peaceful **CONCERTED ACTION INCLUDING** picketing by employees during any labor controversy or in the exercise of the right of self-organization or collective bargaining, or shall aid or abet such obstruction or interference. **NO PICKET OR OTHER PEACEFUL CONCERTED ACTION CONDUCTED BY WORKERS IN THE COURSE OF A LABOR CONTROVERSY OR DISPUTE SHALL BE IMPEDED OR INTERFERED WITH IN ANY MANNER ON THE GROUND THAT IT IS BEING HELD IN A COMMON BUSINESS AREA SUCH AS A MALL OR AN INDUSTRIAL PARK. WORKERS SHALL HAVE AN ABSOLUTE RIGHT TO CONDUCT PICKETS OR OTHER CONCERTED ACTIONS IN AREAS PROXIMATE TO ANY BUILDING, OFFICE, OUTLET, BRANCH, OR SIMILAR LOCATION USED BY THEIR EMPLOYER IN THE COURSE OF BUSINESS.**

(c) No employer shall use or employ any **REPLACEMENT WORKERS FOR STRIKERS OR** strike-breakers, nor shall any person **ALLOW HIMSELF OR HERSELF TO** be employed as a strike-breaker **OR REPLACEMENT FOR STRIKERS. "REPLACEMENT WORKERS"** AS USED IN THIS PROVISION SHALL INCLUDE ANY PERSON LISTED IN THE ROSTER OF MANPOWER AGENCIES CONTRACTED BY THE EMPLOYER TO PROVIDE WORKERS ON A TEMPORARY OR "ON CALL" BASIS BUT WHO OTHERWISE DO NOT HAVE ANY REGULAR EMPLOYMENT WITH THE EMPLOYER, AS WELL AS STUDENTS UNDERGOING PRACTICAL TRAINING WITH THE EMPLOYER AS PART THEIR ACADEMIC REQUIREMENTS, IF THE SAME ARE ASSIGNED ADDITIONAL DUTIES OR REQUIRED TO WORK ADDITIONAL HOURS FOR THE PURPOSE OF FILLING IN FOR STRIKING WORKERS.

(d) No public official or employee, including officers and personnel of the [New] Armed Forces of the Philippines or the [Integrated] **PHILIPPINE** National Police, or armed persons, shall bring in, introduce or escort in any manner, any individual who seeks to replace strikers in entering or leaving the premises of a strike area, or work in place of the strikers. The police force shall keep out of the picket lines unless actual violence or other criminal acts occur therein: [Provided, That nothing herein shall be interpreted to prevent any public officers from taking any measure necessary to maintain peace and order, protect life and property, and/or enforce the law and legal order.] **VIOLATION OF THIS PROVISION SHALL GIVE RISE TO CRIMINAL LIABILITY UNDER ARTICLE 272 OF THIS CODE, WITHOUT PREJUDICE TO ANY ADMINISTRATIVE LIABILITY THAT MAY BE INCURRED UNDER OTHER LAWS OR REGULATIONS.**

(e) **DELETE.**

(e) AFTER THE UNION HAS SIGNIFIED ITS INTENTION TO RETURN TO WORK, NO EMPLOYER SHALL REFUSE REINSTATEMENT OF STRIKERS RETURNING TO WORK. IT SHALL ALSO BE ILLEGAL FOR AN EMPLOYER TO DISCRIMINATE AGAINST RETURNING EMPLOYEES."

SECTION 3. *Implementing Rules and Regulations.* – Within thirty (30) days from the effectivity of this Act, the Secretary of Labor and Employment, in consultation with the trade unions, labor organizations, and other stakeholders, shall issue the issue and publish the necessary rules and regulations to implement the provisions of this Act.

SECTION 4. *Separability Clause.* – If any provision of this Act, or any part thereof, is declared unconstitutional, the same shall not affect the validity and effectivity of the other portions.

SECTION 5. *Repealing Clause.* – All laws, executive orders, presidential decrees, proclamations, rules, regulations, issuances and enactments or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

SECTION 6. *Effectivity* – This Act shall take effect after fifteen (15) days from its complete publication either in the *Official Gazette* or in a newspaper of general circulation in the Philippines, whichever comes earlier.

APPROVED.