

Republic of the Philippines  
HOUSE OF REPRESENTATIVES  
THIRTEENTH CONGRESS

First Regular Session

House Bill No. ~~3723~~

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Introduced by  
Anakpawis Representatives Crispin B. Beltran, Rafael V. Marlano;  
Bayan Muna Representative Teodoro A. Casiño, Gabriela Women's Party Rep. Liza Largoza-Maza;  
Bayan Muna Representatives Satur C. Ocampo and Joel G. Virador

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### EXPLANATORY NOTE

When former President Ferdinand E. Marcos declared Martial Law in 1972, he also immediately released General Order No. 5 which imposed a total ban on all strikes and all forms of public assemblies. Many international human rights organizations and civil rights groups protested against the General Order, and to deflect some of the criticism, Marcos amended the Labor Code and declared Presidential Decree 823 (which soon after was renumbered PD 849) wherein strike bans were limited to vital industries.

When Marcos faked the lifting of Martial Law in 1981, the Batasang Pambansa passed Batas Pambansa 45 and 227, which changed the provisions on strike in the Labor Code. The words "vital industries" in the Labor code was altered to "industries indispensable to the national interest."

When the Herrera Law was approved in 1989, the Labor Code was once more amended, and Article 263 (g) was added, as a provision that covers disputes in hospitals and clinics, but the anti-strike character of the said provisions was not removed and such provisions were unconstitutional.

In current practice, it is the Department of Labor and Employment (DOLE) secretary who has the power to issue assumption of jurisdiction (AJ) orders, or assume jurisdiction over labor disputes. When the labor secretary issues an AJ order, the labor dispute by law is supposed to be settled, and the strike ended. This regardless of whether the strike has not even been launched. In the instance that the strike has already been launched, workers are supposed to stop the strike and return back to work.

As for the settlement of the labor dispute and the resolution of the complaints of the workers, everything is left to the secretary's discretion and hinges on her opinion. According to Art. 263 (g) of the Labor Code, if it is the view or opinion of the secretary of labor that a labor dispute in question is happening in an industry that is indispensable to the national interest, he or she can release an AJ order to prevent a strike or stop it if it has already been launched. It is the opinion of the secretary that is the deciding factor in the matter.

The last is precisely what labor advocates and the legal counsels of worker's organizations and associations are protesting against.

According to Atty. Remigio Saladero, executive director of the Prolabor Legal Assistance Center (PLACE), the opinion of the labor secretary is difficult to contest in court when the decision is regarding the imposition of an AJ order over a strike or a strike in the making. The main basis for the

AJ is the opinion of the labor secretary - to contest this, one must provide evidence that there was bad faith on the part of the secretary when he/she made the decision.

Apart from this, the DOLE secretary's decision to assume jurisdiction over a labor dispute is immediately executory. This means that even if there is a pending Motion Reconsideration to his/her order, the order must be immediately obeyed nonetheless. If the order is defied, there is a ground to penalize workers.

Because of this and other powers incumbent upon the secretary that he/she uses to artificially settle and put an end to labor disputes, the right to strike has become more illusory.

Some 1.2 million government employees are legally denied the right to bargain collectively and to strike in accordance with Executive Order No. 180, Series of 1987 and Memorandum Circular No.06 of the Civil Service Commission. Even the ILO's Committee of Experts deems this to be in contravention of Convention 98 which has been ratified by the government of the Philippines.

In the private sector, RA 6715 grants the right to strike only to a "legitimate" union which is the "sole and exclusive bargaining agent" in an establishment. CBA violations are no longer strikeable except in extreme cases. But even then, it's the DOLE which has the right to determine what constitute "gross violations" of the CBA.

Moreover, after imposing an AJ, the Secretary of Labor can place the dispute and the parties involved under compulsory arbitration (CA) whenever he or she deems it to be in the "national interest" to do so.

The ILO's Committee of Experts has criticized this provision for being "non-limitative" and extending to non-essential services in practice. For instance, out of 26 labor disputes placed under compulsory arbitration from January 2001 to June 2002, only 10 involved essential services or utilities. The rest involved companies in non-vital industries such as car manufacturing, electronics and hotels - mostly multinational companies (MNC's) or affiliates.

If an AJ is not imposed, other capitalists obtain restraining orders from the regular courts. Bosses can also obtain injunction orders from the NLRC to stop specific acts in relation to strike action. The NLRC has jurisdiction over labor relation disputes including those placed under compulsory arbitration by the President of the Labor Secretary. An NLRC labor arbiter's decision can be appealed and referred to the Commissioners of the NLRC. Their decision, in turn, can be appealed and referred to the Court of Appeals, all the way to the Supreme Court.

What this legal maze demonstrates is that despite the formal recognition of the right to strike, de facto state policy is to subvert this right.

A glaring case is the AJ order and its accompanying return-to-work order labor secretary Patricia Sto. Tomas issued, as well as her order deputizing the Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP) are at the core of the massacre that took place last November 16, 2004. According to labor organizations and labor rights advocates, the way she handled the labor dispute in Hacienda Luisita underscores Sto. Tomas' abuse of power and pro-employer bias.

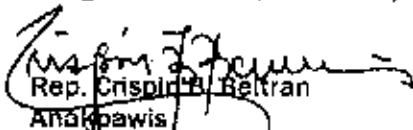
The DOLE has issued numerous AJs that have resulted to hundreds of cases of human rights violations of thousands of workers exercising the legitimate rights to strike and protests against union busting and other unfair labor practices. In the last four years beginning January 20, 2001, the Center for Trade Union and Human Rights (CTUHR) has documented 86 assaults on picketlines and worker protests involving the PNP (including the Regional Special Action Forces and the SWAT), the AFP, and company-hired goons and private guards.

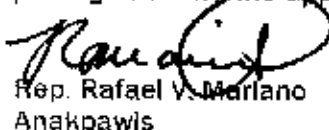
Among such cases wherein the AJ imposed and the results have been disastrous for workers are the following:

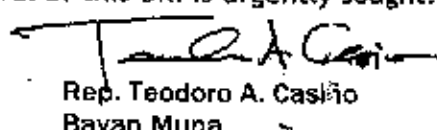
- > The repeated dispersal of the strike of workers of Yokohama Tires Philippines at the Clark Economic Zone involving 300 combined forces of the PNP R5AF, regional PNP and company guards armed with M16 rifles during the whole month of March 2001. The assaulting forces, on the strength of the AJ, burned the picket line, stole the strikers' personal belongings, and left 63 workers physically hurt and wounded. All union officials were slapped with criminal charges. The workers launched the strike against mass dismissal even as they demanded union recognition. Not a single member of the attacking forces was held accountable and prosecuted.
- > On April 2001, the picketlines of striking workers of Toyota Motors Philippines in Bicutan, Paranaque and Sta. Rosa, Laguna were attacked by the PNP and hired company goons after Sec. Sto. Tomas assumed jurisdiction over the dispute. Sto. Tomas justified the AJ by saying that the strike at Toyota gives a negative signal to investors, Japanese, particularly. The order was silent on what to do with the complaints and demands of the workers. The newly-formed union, the Toyota Motors Philippines Corp. Workers Association (TMPCWA) was protesting the dismissal of its 220 officers and members in the company's move to bust the union.
- > On December 2, 2001, a composite force of 700 Regional Special Action Forces (R5AF), the PNP Regional Mobile Group, private guards and goons armed with high-caliber rifles and steel pipes hosed down and beat 70 striking workers of Nissan Motors Philippines in Sta. Rosa, Laguna while they were eating breakfast in the picketline. The R5AF, etc. were enforcing an AJ order. Sixty (60) workers were injured.
- > Fifteen protesting workers of Lecon Integrated Products - a company producing SM Bonus Products - were violently dispersed by 14 PNP/SWAT armed with shotguns and .45 caliber from Paranaque Police Station on January 12, 2002. The dispersal resulted in the miscarriage of a five-month pregnant wife of a union leader. Another nine-month pregnant wife of another union official gave birth to a stillborn baby.
- > The dispersal of strikers of Nestle Philippines in Cabuyao, Laguna on June 3 and 23, 2003 is yet another case. A composite of PNP Cabuyao led by Chief Supt. Eriberto Paglinawan, 100 R5AF force put up camp inside the plant and more than 300 company guards dispersed the 400 workers and supporters holding a forum in front of the factory gates. The assaulting forces used water cannons and clubs against the strikers. Mr. Vicente Batayon, Nestle workers union Board of Directors member was nabbed, detained and mauled inside the plant. He was taken to the hospital after his right clavicle snapped. Seventeen others were severely injured. A more violent dispersal followed on June 23, were 24 workers were seriously hurt.

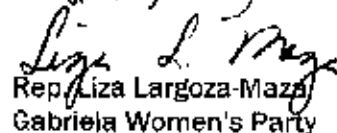
There are many other cases of strike dispersals that took place upon the strength of the DOLE's AJ order.

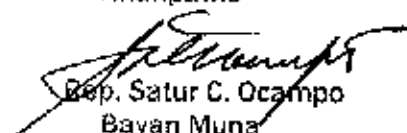
In light of all this, and many other compelling reasons, the approval of this bill is urgently sought.

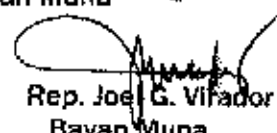
  
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**AN ACT**  
**AMENDING PRESIDENTIAL DECREE NO. 442 OR THE PHILIPPINE LABOR CODE BY REPEALING**  
**ARTICLE 263 (G)**

**Section 1.** Any provision of law to the contrary notwithstanding, Article 263 (g) of Presidential Decree No. 442 of the Philippine Labor Code as amended which states:

"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 may assume jurisdiction of 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 lock out as specified in the assumption or certification shall have the effect automatically enjoining the intended or impending strike or lock out 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. 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 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 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 operations 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 lock-out. 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 lock-out, 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 or 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 in 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, is hereby repealed.

Section 2. This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved,