

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 4072

INTRODUCED BY

REPRESENTATIVE EMIL L. ONG

EXPLANATORY NOTE

Voluntary arbitration as a preferred mode of dispute settlement is a Constitutional mandate.

In practice, however, voluntary arbitration even in organized establishments is rarely resorted to even if there are sufficient competent, regularly retooled and duly accredited voluntary arbitrators all over the country under the Philippine Association of Voluntary Arbitration (PAVA).

The paucity of cases referred to voluntary arbitration is mainly due to a lacuna in the law as to the jurisdiction of the voluntary arbitrator especially visavis the Labor Arbiter of the National Labor Relations Commission. This bill will cure that defect.

More powers for the effective discharge of his duties are given to the voluntary arbitrator while at the same time providing for sanctions for certain infractions like not deciding the case within twenty (20) calendar days from the date of the submission of the dispute for decision.

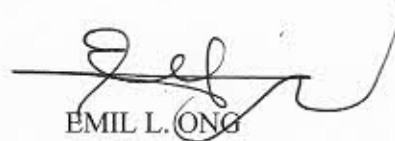
This bill seeks to amend the following provisions of the labor code. Articles 260, 261, 262, 262-A, 263 and Article 277 (F) will be renumbered as 262-C referring to "The Special Voluntary Arbitration Fund." The Article provides for the allocation of P75 Million Pesos in the National Conciliation and Mediation Board's (NCMB) annual general appropriations which allocated 80% for the case subsidy for the unions which do not have the capacity to pay the voluntary arbitrator's fees. The 20% of the fund shall be allocated to operations of the Tripartite Voluntary Arbitration Advisory Council (TPAAC) and the promotion of the voluntary arbitration program including the regular and special retooling for arbitrators nationwide.

A new provision, Article 262-D, is proposed to be inserted to provide for the accreditation and delisting of voluntary arbitrators. This confers express power to the NCMB to accredit or delist voluntary arbitrators. Under the existing provision of the Labor Code, the authority of the Board to accredit is implied only from Art. 260. The same provision also requires attendance of voluntary arbitrators in continuing retooling programs in order to remain in the active list of voluntary arbitrators. The same provision also provides for the authority of the Board to delist and remove voluntary arbitrators from the roster of active voluntary arbitrators.

Another new provision, Article 262-E is also proposed to be inserted providing for the composition of the Tripartite Voluntary Arbitration Advisory Council. It proposes for the inclusion of two from the PAVA as regular members of the TVAAC to represent

the voluntary arbitrators to correct the present set-up where the PAVA is only an ex-officio member with no voting rights. This, however, shall be without any compensation.

In view thereof, the urgent approval of this Bill, which is a companion identical Bill with Senate Bill No. 793, authored by Senator Jinggoy Ejercito Estrada, Chairman Senate Committee on Labor and Employment, is earnestly sought.



EMIL L. ONG

Chairman

Committee on Labor and Employment

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AN ACT

FURTHER STRENGTHENING VOLUNTARY ARBITRATION AS THE PREFERENTIAL MODE OF LABOR DISPUTE SETTLEMENT, AMENDING FOR THIS PURPOSE ARTICLES 217, 260, 261, 262-A, 262-B, 263(G) AND ARTICLE 277(F), AND INCORPORATING A NEW ARTICLE 262-D OF PRESIDENTIAL DECREE NO. 442, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, AS AMENDED

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

SECTION 1. Article 217 of PD 442, otherwise known as the Labor Code of the Philippines, as amended, is hereby further amended to read as:

- “1. Unfair labor practice cases;
2. Termination disputes EXCEPT THOSE INVOLVING WORKERS COVERED BY COLLECTIVE BARGAINING AGREEMENTS WHICH SHALL BE SUBJECT TO THE GRIEVANCE MACHINERY AND VOLUNTARY ARBITRATION;
3. XXX”

SEC. 2. Article 260 of the same Code, otherwise known as the Labor Code of the Philippines, as amended, is hereby further amended to read as:

“Article 260. Grievance Machinery and Voluntary Arbitration. The parties to a Collective Bargaining Agreement, shall include therein provisions that will ensure the mutual observance of its terms and conditions. They shall establish a machinery for the adjustment and resolution of grievances 1) arising from the implementation and interpretation of the collective bargaining agreements and 2) those arising from the interpretation and enforcement of company personnel policies which remain unresolved after exhaustion of the grievance procedure INCLUDING ALL TERMINATION CASES INVOLVING WORKERS COVERED BY COLLECTIVE BARGAINING AGREEMENTS. FOR THIS PURPOSE, THE PARTIES AND THE BOARD SHALL ENSURE THAT GRIEVANCE MECHANISMS ARE IN PLACE IN ALL ORGANIZED ESTABLISHMENTS AND SHALL CONTINUOUSLY WORK TO ENHANCE AND STRENGTHEN THIS GRIEVANCE MACHINERY.”

"All grievances submitted to the grievance machinery which are not settled within seven (7) calendar days from the date of its submission TO THE LAST STEP PRIOR TO VOLUNTARY ARBITRATION shall automatically be referred to voluntary arbitration prescribed in the Collective Bargaining Agreement."

"For this purpose, parties to a Collective Bargaining Agreement shall name and designate in advance a Voluntary Arbitrator or Panel of Voluntary Arbitrators, [or include in the agreement a procedure for the selection of such Voluntary Arbitrator or Panel of Voluntary Arbitrators,] preferably from the listing of qualified Voluntary Arbitrators duly accredited by the Board. In case the parties fail to NAME AND DESIGNATE IN ADVANCE [select] a Voluntary Arbitrator or Panel of Voluntary Arbitrators, the Board shall designate the Voluntary Arbitrator or Panel of Voluntary Arbitrators [, as may be necessary, pursuant to the selection procedure agreed upon in the Collective Bargaining Agreement,] which shall act with the same force and effect as if the Arbitrator or panel of Arbitrators has been SO NAMED AND DESIGNATED [selected by the parties as described above]."

"IF THE COLLECTIVE BARGAINING AGREEMENT DOES NOT SPECIFY THE NUMBER OF ARBITRATORS, THE CASE SHALL BE SUBMITTED, HEARD AND RESOLVED BY A SOLE ARBITRATOR, UNLESS THE PARTIES AGREE OTHERWISE."

"IF ONE OF THE PARTIES REFUSES TO SUBMIT THE UNRESOLVED GRIEVANCES TO VOLUNTARY ARBITRATION, THE WILLING PARTY SHALL INITIATE SUBMISSION TO ARBITRATION BY SERVING A NOTICE TO ARBITRATE UPON THE OTHER PARTY TO A COLLECTIVE BARGAINING AGREEMENT. THE NOTICE SHALL STATE THE ISSUE OR ISSUES TO BE ARBITRATED, COPY THEREOF FURNISHED THE BOARD AND/OR THE VOLUNTARY ARBITRATOR OR PANEL OF ARBITRATORS DESIGNATED IN THE COLLECTIVE BARGAINING AGREEMENT."

"IF THE PARTY UPON WHOM THE NOTICE IS SERVED FAILS OR REFUSES TO RESPOND FAVORABLY WITHIN SEVEN (7) DAYS FROM RECEIPT THEREOF, THE VOLUNTARY ARBITRATOR OR PANEL OF VOLUNTARY ARBITRATORS DESIGNATED IN THE COLLECTIVE BARGAINING AGREEMENT SHALL COMMENCE VOLUNTARY ARBITRATION PROCEEDINGS. WHERE THE COLLECTIVE BARGAINING AGREEMENT DOES NOT SO DESIGNATE, THE BOARD SHALL CALL THE PARTIES AND APPOINT A VOLUNTARY ARBITRATOR OR PANEL OF VOLUNTARY ARBITRATORS, WHO SHALL THEREAFTER COMMENCE ARBITRATION PROCEEDINGS IN ACCORDANCE WITH THE PRECEEDING PARAGRAPH."

"IN INSTANCES WHERE PARTIES FAIL TO SELECT A VOLUNTARY ARBITRATOR OR PANEL OF VOLUNTARY ARBITRATORS, THE REGIONAL BRANCH DIRECTOR OF THE BOARD SHALL DESIGNATE THE VOLUNTARY ARBITRATOR OR PANEL OF VOLUNTARY ARBITRATORS, AS MAY BE NECESSARY, WHICH SHALL HAVE THE SAME FORCE AND EFFECT AS IF THE PARTIES HAVE SELECTED THE ARBITRATOR."

SEC. 3. Article 261 of the same Code, as amended, is hereby further amended to read as:

"Article 261. Jurisdiction of Voluntary Arbitrators or Panel of Voluntary Arbitrators. - The Voluntary Arbitrator or Panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide ALL unresolved grievances:

1. Arising from the implementation or interpretation of the collective bargaining agreements; [and]

2. [those] Arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article, INCLUDING CASES OF TERMINATION OF WORKERS COVERED BY COLLECTIVE BARGAINING AGREEMENTS;
3. RELATING TO WAGE DISTORTION ISSUES UNDER RA 6727; AND
4. ARISING FROM PRODUCTIVITY INCENTIVE PROGRAMS UNDER RA 6971."

"Accordingly, violation of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this article, gross violation of Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement."

"The Commission, its Regional Offices and the Regional Directors of the Department of Labor and Employment shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the Voluntary Arbitrator or Panel of Voluntary Arbitrators and shall immediately dispose and refer the same to the Grievance Machinery or Voluntary Arbitration provided in the Collective Bargaining Agreement."

SEC. 4. Article 262, of the same Code, as amended, is hereby further amended to read as:

"Art. 262. Jurisdiction over other labor disputes - The Voluntary Arbitrator or Panel of Voluntary Arbitrators [, upon agreement of the parties,] shall also hear and decide all other labor disputes [including unfair labor practices and bargaining deadlocks.] IN ANY OF THE FOLLOWING SITUATIONS:"

A. UPON AGREEMENT OF THE PARTIES.

B. IF THE PARTIES ARE NOT COVERED BY A COLLECTIVE BARGAINING AGREEMENT, THE PARTY-COMPLAINANT, MAY AT HIS/HER OPTION, SUBMIT THE CLAIM OR DISPUTE TO EITHER THE VOLUNTARY ARBITRATOR OR PANEL OF VOLUNTARY ARBITRATORS, OR TO THE NATIONAL LABOR RELATIONS COMMISSION AND ITS LABOR ARBITERS.

IF THERE IS NEITHER A PROVISION NOR AGREEMENT AS TO THE VOLUNTARY ARBITRATOR TO BE APPOINTED BY THE PARTIES, THE SAME SHALL BE APPOINTED BY THE BOARD FROM THE LIST OF ACTIVE AND ACCREDITED VOLUNTARY ARBITRATORS.

C. WHEN THE DISPUTE IS CERTIFIED BY THE SECRETARY OF LABOR AND EMPLOYMENT TO THE BOARD FOR VOLUNTARY ARBITRATION IN ACCORDANCE WITH ARTICLE 263 (G) OF THIS CODE.

SEC. 5. Article 262-A of the same Code, as amended, is hereby further amended to read as:

"Article 262-A. Procedures - The Voluntary Arbitrator or Panel of Voluntary Arbitrators shall have the power to ADMINISTER OATHS, hold hearings, receive

evidences, SUBPOENA WITNESSES TO APPEAR IN HEARINGS AND TO PRODUCE DOCUMENTS, TO CITE FOR DIRECT AND INDIRECT CONTEMPT AND IMPOSE APPROPRIATE PENALTIES THEREFOR IN ACCORDANCE WITH LAW and take whatever action is necessary to resolve the issue or issues subject of the dispute, including efforts to effect a voluntary settlement between parties."

"All parties to the dispute shall be entitled to attend the arbitration proceedings. The attendance of any third party or the exclusion of any witness from the proceedings shall be determined by the voluntary arbitrator or Panel of Voluntary Arbitrators. Hearings may be adjourned for a cause or upon agreement by the parties."

"Unless the parties agree otherwise, it shall be mandatory for the voluntary arbitrator or Panel of Voluntary Arbitrators to render an award or decision within twenty (20) calendar days from the date of submission of the dispute FOR DECISION [to voluntary arbitration]. "FAILURE ON HIS/HER OR THEIR PART TO RENDER AN AWARD OR A DECISION WITHIN SUCH PRESCRIBED PERIOD SHALL BE SUFFICIENT CAUSE FOR THE BOARD TO DELIST OR REMOVE THEIR NAMES FROM THE LIST OF ACCREDITED VOLUNTARY ARBITRATORS AND BAR THEM FROM PRACTICE OF THE VOLUNTARY ARBITRATION PROFESSION; PROVIDED, HOWEVER, THAT DUE PROCESS IS OBSERVED. IN SUCH CASES, IT SHALL BE UNLAWFUL FOR THE VOLUNTARY ABITRATOR OR PANEL OF VOLUNTARY ARBITRATORS TO REFUSE OR FAIL TO TURN OVER TO THE BOARD THE RECORD OF THE CASES WITHIN TEN (10) CALENDAR DAYS AFTER ITS DEMAND FOR THE SAME FOR FURTHER DISPOSITION IN ACCORDANCE WITH THE PRECEEDING PARAGRAPHS."

"The award or decision of the voluntary arbitrator or Panel of Voluntary Arbitrators shall contain the facts and the law on which it is based. It shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties. THE FINAL DECISION OF THE VOLUNTARY ARBITRATOR OR PANEL OF VOLUNTARY ARBITRATORS SHALL BE IMMEDIATELY EXECUTORY UNLESS RESTRAINED BY THE SUPREME COURT WHICH ALONE SHALL REVIEW THE AWARD OR DECISION IN A PETITION FOR CERTIORARI UNDER RULE 65 OF THE RULES OF COURT.

"Upon motion of any interested party, the Voluntary Arbitrator or Panel of Voluntary Arbitrators SHALL ISSUE THE WRIT OF EXECUTION. [or the Labor Arbiter in the region where the movant resides, i] In case of the absence or incapacity of the Voluntary Arbitrator or Panel of Voluntary Arbitrators, for any reason, THE BOARD SHALL DESIGNATE, UPON CONSULTATION WITH THE PARTIES, ANOTHER VOLUNTARY ARBITRATOR TO issue a writ of execution requiring either the sheriff of the NATIONAL CONCILIATION AND MEDIATION BOARD, DEPARTMENT OF LABOR AND EMPLOYMENT, NATIONAL LABOR RELATIONS COMMISSION, [Cmmission or regular courts] or any public official whom the parties may designate in the submission agreement to execute the final decision [, order or award]. IN ORDER TO FACILITATE THIS FUNCTION, THE POSITION OF SHERIFF IS HEREBY CREATED IN ALL REGIONAL BRANCHES OF THE BOARD."

"FOR THIS MATTER, THE BOARD MAY DEPUTIZE ANY LAW ENFORCEMENT AGENCY TO ASSIST IN THE EFFECTIVE ENFORCEMENT OF DECISIONS[, AWARDS, RESOLUTIONS OR ORDERS] OF VOLUNTARY ARBITRATORS OR PANEL OF ARBITRATORS."

SEC. 6. Article 262-B of the same Code, as amended, is hereby further amended to read as:

"Art. 262-B. Cost of Voluntary Arbitration and Voluntary Arbitrator's fee. - The parties to a Collective Bargaining Agreement shall provide therein a proportionate sharing scheme on the cost of voluntary arbitration including PAYMENT OF VOLUNTARY ARBITRATOR'S FEES. The fixing of fees of Voluntary Arbitrators, whether shouldered wholly by the parties or TO BE subsidized by the Special Voluntary Action Fund SHALL BE MADE IN ACCORDANCE WITH THE GUIDELINES ISSUED BY THE BOARD UPON RECOMMENDATION OF THE TRIPARTITE VOLUNTARY ARBITRATION ADVISORY COUNCIL AND APPROVED BY THE SECRETARY OF LABOR AND EMPLOYMENT and shall take into account the following factors:

- (a) Nature of the case;
- (b) Time consumed in hearing the case;
- (c) Professional standing of the Voluntary Arbitrator;
- (d) Capacity to pay of the parties; and
- (e) Fees provided for in the Revised Rules of Court."

SEC. 7. Article 277, paragraph (f) of the same Code, as amended, is hereby renumbered as Article 262-C, to read as:

"ARTICLE 262-C. THE SPECIAL VOLUNTARY ARBITRATION FUND. [(f)] A special Voluntary Arbitration Fund is hereby established in the Board to subsidize the cost of voluntary arbitration [in cases involving the interpretation of the Collective Bargaining Agreement,] including the arbitrator's fees, and for such other related purposes to promote and develop voluntary arbitration. The Board shall administer the Special Voluntary Arbitration Fund in accordance with the guidelines it may adopt upon the recommendation of the Council, which guidelines shall be subject to the approval of the Secretary of Labor and Employment, PROVIDED, THAT EIGHTY PERCENT 80% OF THE FUND SHALL BE ALLOCATED FOR SUBSIDY FOR UNIONS WHICH DO NOT HAVE THE CAPACITY TO PAY THEIR AGREED SHARE OF THE VOLUNTARY ARBITRATOR'S FEE AS PROVIDED FOR IN THE CBA. CONTINUING FUNDS NEEDED FOR THIS PURPOSE IN THE INITIAL YEARLY AMOUNT OF SEVENTY-FIVE MILLION PESOS (Php75,000,000.00) [fifteen million pesos] shall be provided in the 1989 annual general appropriations act."

"The amount of subsidy in appropriate cases shall be determined by the Board in accordance with the established guidelines issued by it upon the recommendation of the Council."

"THE REMAINING TWENTY PERCENT (20%) OF THE FUND shall [also] be utilized for the operation of the council, the training and education of Voluntary Arbitrators and the Voluntary Arbitration Program."

SEC. 8. A new provision is hereby proposed to be inserted as Article 262-D, to read as:

"ARTICLE 262-D. ACCREDITATION AND DE-ACCREDITATION OF VOLUNTARY ARBITRATORS".

"THE BOARD SHALL HAVE THE POWER TO ACCREDIT VOLUNTARY ARBITRATORS AND MAINTAIN A ROLL OF ACCREDITED VOLUNTARY ARBITRATORS IN ACCORDANCE WITH THE CRITERIA AND GUIDELINES IT

SHALL ESTABLISH."

"THE ACCREDITATION OF AN INDIVIDUAL AS VOLUNTARY ARBITRATOR SHALL BE SUBJECT TO THE CONDITION THAT HE MEETS ALL THE QUALIFICATIONS PRESCRIBED BY THE BOARD FOR ACCREDITATION. IF FOUND QUALIFIED, ACCREDITATION AS VOLUNTARY ARBITRATOR SHALL BE ON A LIFETIME BASIS, UNLESS DELISTED PURSUANT TO THE DELISTING GUIDELINES APPROVED BY THE TRIPARTITE VOLUNTARY ARBITRATION ADVISORY COUNCIL. TO MAINTAIN THEIR ACTIVE STATUS, HOWEVER, VOLUNTARY ARBITRATORS SHALL BE REQUIRED TO ATTEND THE ARBITRATORS' CONTINUING RETOOLING PROGRAM (ACRP), SUBJECT TO THE GUIDELINES WHICH THE COUNCIL AND THE BOARD SHALL ADOPT."

"ONLY ARBITRATORS WITH ACTIVE STATUS SHALL BE INCLUDED IN THE LIST OF ACTIVE ARBITRATORS BEING DISSEMINATED TO LABOR AND MANAGEMENT FOR SELECTION AND APPOINTMENT PURPOSES."

"THE BOARD SHALL ALSO HAVE THE POWER TO DELIST AND REMOVE ACCREDITED VOLUNTARY ARBITRATORS FROM THE ROLL FOR JUST CAUSE AND SUBJECT TO THE REQUIREMENTS OF DUE PROCESS; PROVIDED, THAT THE DECISION OF THE BOARD TO DELIST OR REMOVE IS FINAL AND EXECUTORY."

SEC. 9. A new provision taken from Executive Order No. 251 is hereby proposed to be inserted as Article 262-E, to read as:

"ARTICLE 262-E. COMPOSITION OF THE TRIPARTITE VOLUNTARY ARBITRATION ADVISORY COUNCIL".

"THE TRIPARTITE VOLUNTARY ARBITRATION ADVISORY COUNCIL IS HEREBY CREATED AND ATTACHED TO THE NATIONAL CONCILIATION AND MEDIATION BOARD. THE COUNCIL SHALL ADVISE THE BOARD ON MATTERS PERTAINING TO THE PROMOTION OF VOLUNTARY ARBITRATION AS THE PREFERRED MODE OF DISPUTE SETTLEMENT."

"THE TRIPARTITE VOLUNTARY ARBITRATION ADVISORY COUNCIL SHALL CONSIST OF THE EXECUTIVE DIRECTOR [ADMINISTRATOR] OF THE NATIONAL CONCILIATION AND MEDIATION BOARD AS CHAIRMAN, ONE (1) MEMBER FROM THE GOVERNMENT, TWO (2) MEMBERS REPRESENTING LABOR, AND TWO (2) OTHER MEMBERS REPRESENTING MANAGEMENT. THE MEMBERS SHALL BE APPOINTED BY THE PRESIDENT TO SERVE FOR A TERM OF THREE (3) YEARS. THE CHAIRMAN AND MEMBERS THEREOF SHALL SERVE WITHOUT COMPENSATION."

"IN ORDER TO FURTHER STRENGTHEN VOLUNTARY ARBITRATION, THE PRESIDENT AND EXECUTIVE VICE-PRESIDENT OF THE PHILIPPINE ASSOCIATION ON VOLUNTARY ARBITRATION, INC. SHALL ALSO BECOME MEMBERS OF THE TRIPARTITE VOLUNTARY ARBITRATION ADVISORY COUNCIL."

SEC. 10. *Art. 263 (g)* of the same Code, as amended, is hereby further amended to read as:

"ARTICLE 263 (g). *Strikes, picketing and lockouts.* -(a) x x x

(g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same TO THE BOARD FOR VOLUNTARY ARBITRATION, OR to the Commission for compulsory arbitration."

SEC. 11. All laws, orders, issuances, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 12. The Secretary of Labor and Employment shall promulgate the necessary rules and regulations to implement the provisions of this Act.

SEC. 13. If any provision of this Act or the application thereof to any person or circumstances is held invalid or unconstitutional, the same shall not affect the remaining provisions of this Act.

SEC. 14. This Act shall take effect fifteen (15) days after its complete publication in the Official Gazette or in at least two (2) newspapers of national circulation.

Approved,,