

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 4671

INTRODUCED BY ANAKPAWIS PARTY-LIST REPRESENTATIVE
RAFAEL V. MARIANO

EXPLANATORY NOTE

The assumption of jurisdiction (AJ) order being issued by the Department of Labor and Employment (DOLE) Secretary runs counter to instituted conventions and mandates protecting workers' rights for freedom of association, freedom of assembly and right to collective bargaining agreement.

In our observance, labor disputes between workers and employers that resulted to the intervention of various government agencies and the imposition of the assumption of jurisdiction (AJ) order are disputes that are related to the non-recognition of freedom to associate, assemble, and enter into collective bargaining negotiations. The imposition of the assumption of jurisdiction (AJ) order, therefore, gravely violates International Labor Standards set by International Labour Organization (ILO) and the 1987 Philippine Constitution.

According to International Labour Organization (ILO), all member States must respect, realize and implement Freedom of Association and Right to Collective Bargaining, other Core Conventions as defined by the International Labour Organization (ILO) Declaration of 1998, and other ratified Conventions.

International Labour Organization (ILO) Convention No. 87 declared that "workers, without any distinction, have the right to form or join an organization of their own choosing, without previous authorization, to collectively protect and promote their economic and social interests; all workers, regardless of their occupations, economic sectors and types of contracts - should be able to enjoy the right to self-organization and trade unions and their employers collectively bargain on wages and conditions of work with an aim to conclude collective bargaining agreement.

ILO Convention No. 98 enshrines the protection of workers against acts of anti-union discrimination from employer, protection of workers' and employers' organizations against acts of interference by each other, and promotion of collective bargaining.

Out of the one hundred eighty (180) Conventions adopted by the International Labour Organization (ILO), the Government of the Republic of

the Philippines has ratified, so far, only thirty-seven (37) Conventions, giving more authority to employers and even the government to 'violate' labor rights in the pretext of implementing administrative and executive guidelines from the Department of Labor and Employment (DOLE) which included the issuance of assumption of jurisdiction (AJ) orders.

Paragraph g, Article 263 of the Labor Code of the Philippines provides that, "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 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. When a strike 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.

It is clear from the aforesaid provision that the opinion of the Department of Labor and Employment (DOLE) Secretary is the deciding factor in the matter and this is what labor advocates and legal counsels of worker's organizations and associations are protesting.

According to Atty. Remigio Saladero, Executive Director of the Prolabor Legal Assistance Center (PLACE), the opinion of the Department of Labor and Employment (DOLE) Secretary is difficult to contest in court when the same refers to the imposition of an assumption of jurisdiction (AJ) order over a strike or an impending strike. This is because the main basis for the assumption of jurisdiction (AJ) is the opinion of the labor secretary - to contest this, one must present evidence that there was bad faith on the part of the secretary when he/she made the decision.

Apart from this, the Department of Labor and Employment (DOLE) Secretary's decision to assume jurisdiction over a labor dispute is immediately executory. This means that even if there is a pending Motion for Reconsideration on his/her order, the order must be immediately implemented. If the order is defied, there is a ground to penalize the workers.

Because of the foregoing and other powers possessed by the Department of Labor and Employment (DOLE) Secretary that he/she uses to artificially settle and put an end to labor disputes, the right to strike has become more illusory.

Moreover, after assuming jurisdiction, the Department of Labor and Employment (DOLE) Secretary can place the dispute and the parties involved under compulsory arbitration (CA) whenever he or she deems it to be of "national interest" to do so.

The International Labour Organization (ILO) High Level Mission conducted last September 2009 revealed that mounting complaints of violation of the rights of workers to freedom of association can be rooted from the imposition of assumption of jurisdiction (AJ). The following are among these cases:

- *Dismissal of workers belonging to University of San Agustin Employees Union for not complying with the assumption of jurisdiction (AJ) Order.*
- *Militarization of Nestle Cabuyao Workers' Picketline following an assumption of jurisdiction (AJ) Order and deputization Order of the Secretary of the Department of Labor and Employment.*
- *Violation of freedom of association, government's failure to implement Conventions No.87 and 89, following an assumption of jurisdiction (AJ) Order issued on 10 April 2009 by the Department of Labor and Employment (DOLE) Secretary against Toyota Motors Philippines Corporation Worker's Association (TMPCWA) even before the union launched its strike on 23 and 29 April 2009.*

The report of the International Labour Organization (ILO) Governing Body's Committee on Freedom of Association also cited that the High Level Mission "heard numerous stories of impediments and obstacles to the full exercise of freedom of association" and that unions "had been effectively blocked from exercising trade union rights for decades and any advances in this respect were few and far between."

The report further noted the complaints that "trade unions are rarely respected by the employer who is reported to prefer a non-union workplace or one where unions are generally submissive" and "when independent unions exist, collective bargaining was said to be difficult and strike action routinely end in the Department of Labor and Employment (DOLE) Secretary's exercise of the assumption of jurisdiction power."

The recommendations of the International Labour Organization's (ILO's) Committee on Freedom of Association following the International Labour Organization High Level Mission (ILO-HLM) further affirm the contradiction between the assumption of jurisdiction (AJ) and the workers' freedoms and rights. The report of the Committee released last March 2010 cited the Philippine Government's malign imposition of assumption of jurisdiction (AJ) on the workers' peaceful strikes. The Committee Report on the complaint of Toyota Workers' Union filed before the International Labour Organization (ILO) reads as follows:

"The Committee expressed its regret that the Supreme Court appears to consider that the staging of peaceful pickets should be sanctioned as a violation of an assumption of jurisdiction order, itself contrary to freedom of association principles, and as liable to lead to a worsening of an already deteriorated situation..." (p.346)

The report reiterated that freedom of association and peaceful and lawful mass actions or strikes of workers "should not be subject to interference by the authorities."

If an assumption of jurisdiction (AJ) order is not issued, other capitalists obtain restraining order from the regular courts. Employers can

also obtain injunction order from the National Labor Relations Commission (NLRC) to prevent acts in relation to a strike. The National Labor Relations Commission (NLRC) has jurisdiction over labor relation disputes including those placed under compulsory arbitration (CA) by the Secretary of Department of Labor and Employment (DOLE). A Labor Arbiter's decision can be appealed to the Commissioners of the National Labor Relations Commission (NLRC). The decision of the latter, in turn, can be appealed 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 exists to subvert this right.

The assumption of jurisdiction (AJ) Order issued by then Department of Labor and Employment (DOLE) Secretary Patricia Sto. Tomas and its accompanying return-to-work Order, as well as her Order deputizing the Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP) to enforce the assumption of jurisdiction (AJ) Order are at the core of the Hacienda Luisita Massacre that took place last November 16, 2004. According to labor organizations and labor rights advocates, the way then Department of Labor and Employment (DOLE) Secretary handled the labor dispute in Hacienda Luisita underscores the Secretary's abuse of power and pro-employer bias.

Department of Labor and Employment (DOLE) Secretary Arturo Brion persisted in issuing assumption of jurisdiction (AJ) orders against workers and labor unions that exercise their right to strike when he assumed office in July 2006. The numerous assumption of jurisdiction (AJ) orders issued by the Department of Labor and Employment (DOLE) resulted to hundreds of cases of human rights violations of workers exercising their legitimate right to strike and to protest against union busting and other unfair labor practices. During the turnover ceremonies at the Department of Labor and Employment (DOLE) in 2008, former Department of Labor and Employment (DOLE) Secretary Mariano Roque did not make any position or statement on the issue and vowed to "carry on Department of Labor and Employment's programs and policies initiated by Brion and other labor officials under his stewardship".

Based on the 2009 annual report released by the Center for Trade Union and Human Rights (CTUHR), 1,889 cases of rights violations occurred from 2001 to 2009 under the administration of President Gloria Macapagal-Arroyo. These violations vary from assaults on picket lines, harassments, surveillance, union busting, prohibition of the right to strike, violation of right to organize, manipulation and right to bargain.

Department of Labor and Employment (DOLE) Secretary Rosalinda Baldoz assumed jurisdiction over the high-profile labor dispute at the Philippine Airlines (PAL) in October 2010, over issues raised by flight crew represented by the Flight Attendants and Stewardess' Association of the Philippines (FASAP) concerning the retirement age at the Philippine Airlines (PAL) and other Collective Bargaining Agreement (CBA) proposals.

The Department of Labor and Employment (DOLE) issued the assumption of jurisdiction (AJ) Order to avert a possible strike by the

affected employees that are opposing the Department of Labor and Employment's (DOLE's) approval and upholding of the outsourcing plan.

In December 2010, Malacañang directly assumed jurisdiction over the labor dispute between Philippine Airlines (PAL) management and its ground employees represented by the Philippine Airlines Employees Association (PALEA) over the outsourcing program of the management that will displace more or less three thousand (3,000) regular employees of the country's premier flag carrier. The Order effectively postponed the implementation of the layoff and outsourcing.

The government's issuance of assumption of jurisdiction (AJ) orders on these prominent labor cases sets precedent on future labor disputes. According to *Kilusang Mayo Uno (KMU) Labor Center*, the State nearly-perfected legal devices to prevent strikes. The Department of Labor and Employment (DOLE) even boasted that strikes could rarely push through because of assumption of jurisdiction (AJ). The Department of Labor and Employment (DOLE) has commonly used assumption of jurisdiction (AJ) to order striking workers to return to work and workers who are inclined to defy the order bear the risk of losing their jobs whenever the Department of Labor and Employment (DOLE) assumes jurisdiction.

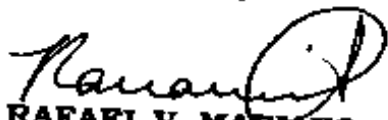
From 2001-2009, more or less two hundred thirty (230) assumption of jurisdiction (AJ) orders were enforced as opposed to only one hundred ninety-one (191) strike incidents. This is only possible in a country with a law that allows for an assumption of jurisdiction (AJ) order even before the strike is launched which as stated earlier was criticized not only by labor groups and advocates but also by the International Labour Organization (ILO) as a direct suppression of the right of workers to freely associate and assemble.

With the use of assumption of jurisdiction (AJ), the Department of Labor and Employment (DOLE) now boasts the re-institution of "industrial peace." In the last decade, strike incidents have declined dramatically from an average of 30 strikes per year from 2001-2005 to an average of seven (7) strikes per year from 2006-2009. However, this declining incident of strikes does not necessarily mean that issues and concerns of workers are properly and justly addressed. From 2007 to 2009, the Center for Trade Union and Human Rights (CTUHR) documented one hundred two (102) cases of violation of workers' rights to freedom of association, thirty one (31) cases of Collective Bargaining Agreement (CBA) violation and three hundred twenty-two (322) violations of economic, social, and cultural rights largely brought about by the 2008 financial crisis. The aforesaid violations affected a total of one hundred thirty four thousand fifty-eight (134,058) workers. Violations of civil and political rights, on the other hand, totaled to one thousand four hundred thirty-four (1,434) cases victimizing seven thousand four hundred thirty-six (7,436) workers. This data is only partial count as independent monitoring of workers rights and labor standards implementations particularly in export processing zones are almost impossible.

The imposition of an assumption of jurisdiction (AJ) order as experienced by many local unions on strike resulted to graver human rights violations such as extrajudicial killings perpetrated by members of law enforcement institutions such as the Philippine National Police (PNP)

including the Regional Special Action Forces and the Special Weapons and Tactics (SWAT) team, the Armed Forces of the Philippines (AFP), and company-hired goons and private guards that are tasked to implement the assumption of jurisdiction (AJ) order.

In view of the foregoing, the passage of this bill is earnestly requested.


RAFAEL V. MARIANO

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**INTRODUCED BY ANAKPAWIS PARTY-LIST REPRESENTATIVE
RAFAEL V. MARIANO**

AN ACT
REPEALING THE PROVISION ON ASSUMPTION OF JURISDICTION
UNDER PARAGRAPH G, ARTICLE 263 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. Paragraph (g), Article 263 of Presidential Decree No. 442, as amended, otherwise known as the "Labor Code of the Philippines" is hereby repealed.

SECTION 2. *Repealing Clause* - All laws, decrees, executive issuances, rules and regulations inconsistent with this Act are hereby repealed or modified accordingly.

SECTION 3. *Effectivity Clause* - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved.