

**Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City**

**SIXTEENTH CONGRESS
First Regular Session**

House Bill No. 2540



**Introduced by TUCP Party-List Representative
HON. RAYMOND DEMOCRITO C. MENDOZA**

EXPLANATORY NOTE

The Philippine Constitution guarantees "the rights of all workers to self-organization, collective bargaining and negotiations, xxx". However, the Labor Code restricts this provision by giving too many opportunities to anti-union employers and their representatives to intervene and frustrate the process. The 'Employer as Bystander' is more of the exception than the rule.

This proposed amendment, the 'Employee Free Choice Act', will address:

- a. Registration of local chapters;
- b. Majority sign-up;
- c. Strengthening enforcement; and
- d. First contract arbitration.

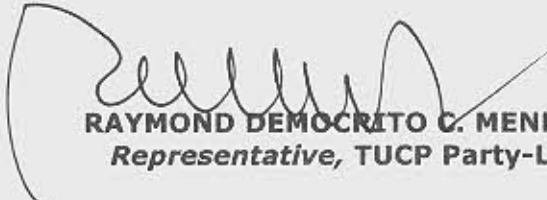
Removing the requirements for the registration of local chapters will uphold the principle that the registration of unions is only ministerial on the part of the Department of Labor and Employment (DOLE). Consistent with the State policy to promote and guarantee full respect for freedom of association and collective bargaining, this proposal is seen as an efficient and expeditious administrative mechanism to implement the said policy.

Majority sign-up will promote employee free choice and make it easier for workers to join and or establish unions. The current union certification process fails to protect workers from the inherent coercive power that management holds over workers. The unequal access to worker-voters tips the balance. Anti-union managers are free to campaign against unionization during working hours while pro-union workers are banned from talking about unionization even at break times.

Penalties must be strong enough to prevent anti-union discrimination of workers exercising their right to self-organization and collective bargaining. Current remedies fail to address the chilling effect of firings. When a union leader is fired for union activity, the impact of that firing extends not only to the worker fired, but to other coworkers that would have received the anti-union message from the employer. The injunctive relief provision levels the playing field with management by giving employees equal access to such measure. This, and the proposed fine and criminal liability of employer charged with unfair labor practice, will strengthen enforcement.

First contract mediation and arbitration is necessary because management can hinder employee free choice by refusing to bargain. Even when employees surmount the many obstacles to forming a union, management frequently denies them the benefits of collective bargaining by refusing to agree on a first contract.

This bill will bring Philippine law into compliance with ILO Convention Nos. 87 and 98 on Freedom of Association and the Right to Collective Bargaining, which the Philippines is obliged to observe as a member State of the International Labor Organization (ILO).


RAYMOND DEMOCRITO C. MENDOZA
Representative, TUCP Party-List

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AN ACT
ESTABLISHING AN EFFICIENT SYSTEM TO STRENGTHEN WORKERS' RIGHT
TO SELF-ORGANIZATION AND COLLECTIVE BARGAINING, AMENDING FOR
THE PURPOSE PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE
KNOWN AS THE LABOR CODE OF THE PHILIPPINES.

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

Section 1.Short Title.– This Act shall be known as the "Employee Free Choice Act of 2010".

Section 2.Injunctive Relief.–Paragraph(f) in Article 218 of the Labor Code is hereby inserted to read as follows:

"Article 218.Powers of the Commission.-- Xxx xxx

Xxx xxx

"(F) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE, TO ENJOIN OR RESTRAIN ANY ACTUAL OR THREATENED COMMISSION OF ANY UNFAIR LABOR PRACTICE WHICH, IF NOT RESTRAINED, MAY CAUSE GRAVE OR IRREPARABLE DAMAGE TO ANY PARTY, ASSOCIATION OR ORGANIZATION: PROVIDED, THAT THE INJUNCTION RESTORES THE STATUS QUO ANTE PENDING THE FULL REVIEW AND RESOLUTION OF THE CASE BY THE COMMISSION."

Section 3.Removing the Documentary Requirements for Registration of Local Chapters. - Article 234-A of the Labor Code is hereby amended to read as follows:

"ARTICLE.234-A. Chartering and Creation of a Local Chapter. - A duly registered federation or national union may directly create a local chapter by issuing a charter certificate indicating the establishment of the local chapter. The chapter shall acquire legal personality [only for purposes of filing a petition for certification election] from the date it was issued a charter certificate AND SHALL BE ENTITLED TO THE RIGHTS AND PRIVILEGES OF A LEGITIMATE LABOR ORGANIZATION UPON SUBMISSION OF ITS CHARTER CERTIFICATE TO THE DEPARTMENT OF LABOR AND EMPLOYMENT."

Section 4.Remedy forUnfair Labor Practices. - A new provision is hereby inserted into the Labor Code as Article 247-A to read as follows:

"ARTICLE 247-A. NOTWITHSTANDING THE PROVISION OF THE IMMEDIATELY PRECEDING PARAGRAPH, ANY EMPLOYER, INCLUDING ANY PERSON ACTING IN THE INTEREST OF AN EMPLOYER, WHO DISMISSES OR THREATENS TO DISMISS OR OTHERWISE DISCRIMINATE AGAINST A UNION MEMBER OR A DULY ELECTED UNION OFFICER COMMITS NOT ONLY AN UNFAIR LABOR PRACTICE BUT ALSO A CRIMINAL OFFENSE WHICH MAY BE THE SUBJECT OF AN IMMEDIATE CRIMINAL PROSECUTION.

"AN EMPLOYEE DISCRIMINATED AGAINST WHILE SEEKING REPRESENTATION BY A LABOR ORGANIZATION, OR DURING THE PERIOD AFTER A LABOR ORGANIZATION WAS RECOGNIZED AS A REPRESENTATIVE UNTIL THE FIRST COLLECTIVE BARGAINING AGREEMENT WAS ENTERED INTO BETWEEN THE EMPLOYER AND THE REPRESENTATIVE, THE NLRC IN SUCH ORDER SHALL AWARD THE EMPLOYEE BACK PAY AND, IN ADDITION, TWO (2) TIMES THAT AMOUNT AS LIQUIDATED DAMAGES.

"ANY EMPLOYER WHO WILLFULLY OR REPEATEDLY COMMITS ANY UNFAIR LABOR PRACTICE WHILE ITS EMPLOYEES ARE SEEKING REPRESENTATION BY A LABOR ORGANIZATION OR DURING THE PERIOD AFTER A LABOR ORGANIZATION HAS BEEN RECOGNIZED AS A REPRESENTATIVE UNTIL THE FIRST COLLECTIVE BARGAINING CONTRACT IS ENTERED INTO BETWEEN THE EMPLOYER AND THE REPRESENTATIVE SHALL, IN ADDITION TO ANY MAKE-WHOLE REMEDY ORDERED, BE SUBJECT TO A CIVIL PENALTY OF NOT TO EXCEED FIVE HUNDRED THOUSAND PESOS (P500,000.00) FOR EACH VIOLATION. IN DETERMINING THE AMOUNT OF ANY PENALTY UNDER THIS SECTION, THE COMMISSION SHALL CONSIDER THE GRAVITY OF THE UNFAIR LABOR PRACTICE AND THE IMPACT OF THE UNFAIR LABOR PRACTICE ON THE CHARGING PARTY, ON OTHER PERSONS SEEKING TO EXERCISE RIGHTS GUARANTEED BY THIS CODE, OR ON THE PUBLIC INTEREST.

"CRIMINAL COMPLAINT IN VIOLATION OF THIS ARTICLE SHALL FALL UNDER THE CONCURRENT JURISDICTION OF THE MUNICIPAL OR REGIONAL TRIAL COURT."

Section 5. Facilitating Initial Collective Bargaining Agreements.—Article 250 (e) of the Labor Code is hereby amended to read as follows:

"ARTICLE 250. Procedure in collective bargaining.—Xxx xxx

Xxx xxx

"(e) The Board shall exert all efforts to settle disputes amicably and encourage the parties to submit their case to a voluntary arbitrator. IN COLLECTIVE BARGAINING HELD FOR THE PURPOSE OF ESTABLISHING AN INITIAL AGREEMENT, THE BOARD SHALL REFER THE DISPUTE TO AN ARBITRATION BOARD ESTABLISHED IN ACCORDANCE WITH SUCH REGULATIONS AS MAY BE PRESCRIBED BY THE BOARD. THE ARBITRATION PANEL SHALL RENDER A DECISION WITHIN 15 DAYS SETTLING THE DISPUTE AND SUCH DECISION SHALL BE BINDING UPON THE PARTIES FOR A PERIOD OF THREE (3) YEARS, UNLESS AMENDED DURING SUCH PERIOD BY WRITTEN CONSENT OF THE PARTIES."

Section 6. Streamlining Union Certification. - Article 257 of the Labor Code is hereby amended to read as follows:

"ARTICLE 257. Petitions in Unorganized Establishments. - In any establishment where there is no certified bargaining agent, THE MED-ARBITER SHALL AUTOMATICALLY RULE ON A PETITION FOR CERTIFICATION FILED BY ANY LEGITIMATE LABOR ORGANIZATION. IF THE LABOR ORGANIZATION SHOWS THAT A MAJORITY OF THE EMPLOYEES IN THE BARGAINING UNIT HAS SIGNED VALID AUTHORIZATIONS DESIGNATING THE PETITIONER LABOR ORGANIZATION AS THEIR BARGAINING REPRESENTATIVE, THE MED-ARBITER SHALL CERTIFY THE LABOR ORGANIZATION AS THE EXCLUSIVE BARGAINING AGENT. IF THE LABOR ORGANIZATION FAILS TO SHOW VALID AUTHORIZATIONS FROM A MAJORITY OF THE EMPLOYEES, a certification election shall automatically be conducted by the Med-Arbiter upon the filing of a petition by any legitimate labor organization, including a national union or federation which has already issued a charter certificate to its local/chapter participating in the certification election or a local/chapter which has been issued a charter certificate by the national union or federation.

"In cases where the petition was filed by a national union or federation, it shall not be required to disclose the names of the local chapter's officers and members."

Section 7.Employer Petition. - Article 258 of the Labor Code is hereby amended to read as follows.

"ARTICLE. 258. When an employer may file petition. - When requested to bargain collectively, an employer may petition the Bureau for [an election] A UNION CERTIFICATION. If there is no existing certified collective bargaining agreement in the unit, the Bureau shall, after hearing, CERTIFY THE LEGITIMATE LABOR ORGANIZATION OR order a certification election IN ACCORDANCE WITH ARTICLE 257 OF THIS CODE.

"All certification cases shall be decided within twenty (20) working days FROM FILING OF THE PETITION.

"The Bureau shall conduct a certification election within twenty (20) days in accordance with the rules and regulations prescribed by the Secretary of Labor."

Section 8.Separability Provisions.-- If any part of this Act is held invalid or declared unconstitutional, the same shall not affect the validity and effectivity of the other parts thereof.

Section 9.Repealing Clause. -- All laws, decrees, executive orders, rules and regulations or parts thereof, which are inconsistent with this Act, are hereby repealed, amended or modified accordingly.

Section 10.Effectivity. - This Act shall take effect fifteen (15) days after its publication in at least two newspapers of general circulation.

Approved,