

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Sixteenth Congress
Second Regular Session

HOUSE BILL NO. 5471



INTRODUCED BY: REP. KARLO ALEXEI B. NOGRALES, REP. EMMELINE Y.
AGLIPAY VILLAR, REP. FLORENCIO T. FLORES, JR.
AND REP. DEOGRACIAS B. RAMOS, JR.

EXPLANATORY NOTE

The 1987 Philippine Constitution promotes the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace. The Constitution also guarantees the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law.

Articles 263, 264 and 272 of the 1974 Labor Code of the Philippines, as amended, having been crafted under the Martial Law era, have to be aligned with the mandates of the 1987 Constitution to foster industrial peace based on social justice.

Particularly, paragraph (g) of Article 263 empowers the Secretary of Labor and Employment to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout, that on his/her opinion, is an "industry indispensable to national interest." This provides the Secretary of Labor and Employment a very wide latitude of discretion in the exercise of assumption power to include labor disputes in an undergarment factory, match manufacturing, hotdog, and fish sauce factory as industries indispensable to the national interest.

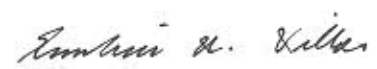
Under this, the State restrains the exercise of the right to strike or lockout with a directive to workers to return to work and the management to accept the striking workers under the same terms and conditions. Article 264 declares as a prohibited act non-compliance with the procedural requirement and defiance of Return to Work Order. Too often, the exercise of assumption power has not resulted to peaceful settlement of labor disputes. Instead, it has triggered dismissal of workers as penalty imposed under Article 272, picket line violence and violation of trade union rights, filing of criminal cases or company closures. This is borne by the cases of trade union rights violations against the Philippine government before the International Labour Organization (ILO) and the US Trade Representatives.

Thus, the bill seeks to amend Article 263, 264 and 272 of the Labor Code to rationalize government interventions in labor disputes by adopting the essential services criteria in the exercise of the assumption or certification power of the Secretary of Labor and Employment, providing conditions in its exercise and to decriminalize violations thereof.

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



KARLO ALEXEI B. NOGRALES
Representative
1st District, Davao City



EMMELINE Y. AGLIPAY VILLAR
Representative
Party List – DIWA



FLORENCIO T. FLORES, JR.
Representative
2nd District, Bukidnon



DEOGRACIAS B. RAMOS, JR.
Representative
2nd District, Sorsogon

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Sixteenth Congress
Second Regular Session

5471
HOUSE BILL NO. _____

INTRODUCED BY: REP. KARLO ALEXEI B. NOGRALES, REP. EMMELINE Y.
AGLIPAY VILLAR, REP. FLORENCIO T. FLORES, JR.
AND REP. DEOGRACIAS B. RAMOS, JR.

**AN ACT RATIONALIZING GOVERNMENT INTERVENTIONS IN LABOR
DISPUTES BY ADOPTING THE ESSENTIAL SERVICES CRITERIA IN THE
EXERCISE OF THE ASSUMPTION OR CERTIFICATION POWER OF THE
SECRETARY OF LABOR AND EMPLOYMENT, AND DECRIMINALIZING
VIOLATIONS THEREOF, AMENDING FOR THIS PURPOSE ARTICLES 263, 264
and 272 OF PRESIDENTIAL DECREE 442, OTHERWISE KNOWN AS THE
LABOR CODE OF THE PHILIPPINES, AS AMENDED AND FOR OTHER
PURPOSES**

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

Section 1. Article 263 of the Labor Code 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 collecting bargaining.
- b) Workers shall have the right to engage in concerted activities 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 case 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 [Ministry] **DEPARTMENT OF LABOR AND EMPLOYMENT** at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 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) The notice must be in accordance with such implementing rules and regulations as the [Minister] **SECRETARY** of Labor and Employment may promulgate.
- e) During the cooling-off period, it shall be the duty of the [Ministry] **DEPARTMENT OF LABOR AND EMPLOYMENT** to exert all efforts at the mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of notice, the labor union may strike or the employer may declare a lockout.
- 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 of the corporation or 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 [Ministry] **DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE)** may on 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 [Ministry] **DOLE** the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided.
- g) When ~~[in his opinion]~~ there exists a labor dispute causing or likely to cause strike or lockout in an industry ~~[indispensable to the national interest,]~~ **ENGAGED IN ESSENTIAL SERVICES, THE SECRETARY OF LABOR AND EMPLOYMENT MAY ASSUME JURISDICTION OVER THE DISPUTE PROVIDED, THAT ANY OF THE FOLLOWING CONDITIONS IS PRESENT:**
 - 1. BOTH PARTIES HAVE REQUESTED THE SECRETARY OF LABOR AND EMPLOYMENT TO ASSUME JURISDICTION OVER THE LABOR DISPUTE; OR
 - 2. UPON REQUEST OR PETITION BY EITHER PARTIES, OR *MOTU PROPIO* ON THE PART OF THE SECRETARY OF LABOR AND EMPLOYMENT AFTER A CONFERENCE CALLED BY THE OFFICE OF THE SECRETARY ON THE PROPRIETY OF ITS ISSUANCE HAS BEEN CONDUCTED.

IN SUCH CASE, THE SECRETARY OF LABOR AND EMPLOYMENT MAY DECIDE OR CERTIFY THE LABOR DISPUTE TO THE NATIONAL LABOR RELATIONS COMMISSION FOR COMPULSORY ARBITRATION, OR TO A VOLUNTARY ARBITRATOR OR PANEL OF VOLUNTARY ARBITRATORS.

SAID ASSUMPTION SHALL HAVE THE EFFECT OF AUTOMATICALLY ENJOINING AN IMPENDING STRIKE OR LOCKOUT. IF A STRIKE/LOCKOUT HAS ALREADY TAKEN PLACE AT THE TIME OF ASSUMPTION, ALL STRIKING OR LOCKED OUT EMPLOYEES AND OTHER EMPLOYEES SUBJECT OF THE NOTICE OF STRIKE OR LOCKOUT SHALL IMMEDIATELY RETURN TO WORK AND THE EMPLOYER SHALL IMMEDIATELY RESUME OPERATIONS AND READMIT ALL EMPLOYEES UNDER THE SAME TERMS AND CONDITIONS PREVAILING BEFORE THE STRIKE OR LOCKOUT.

ESSENTIAL SERVICES REFER TO FUNCTIONS OR SERVICES RENDERED BY AN ESTABLISHMENT, WHICH IF INTERRUPTED, WOULD ENDANGER THE LIFE, PERSONAL SAFETY OR HEALTH OF THE WHOLE OR PART OF THE POPULATION. FOR THIS PURPOSE, THE SECRETARY OF LABOR AND EMPLOYMENT, BY APPROPRIATE REGULATIONS, SHALL DETERMINE THE INDUSTRIES ENGAGED IN ESSENTIAL SERVICES AFTER CONSULTATIONS WITH THE NATIONAL TRIPARTITE INDUSTRIAL PEACE COUNCIL.

IN LABOR DISPUTES AFFECTING INDUSTRIES ENGAGED IN ESSENTIAL SERVICES, IT SHALL BE THE DUTY OF THE UNION AND EMPLOYER TO PROVIDE AND MAINTAIN THE OPERATION OR DELIVERY OF SERVICES. IN CASE OF HOSPITALS, CLINICS OR MEDICAL INSTITUTIONS, THE UNION AND EMPLOYER SHALL PROVIDE AND MAINTAIN AN EFFECTIVE AND FUNCTIONAL WORKFORCE, WHOSE MOVEMENT AND SERVICES SHALL BE UNHAMPERED AND UNRESTRICTED, AS ARE NECESSARY TO ENSURE THE PROPER AND ADEQUATE PROTECTION OF THE LIFE, PERSONAL SAFETY AND HEALTH OF THEIR PATIENTS, MOST ESPECIALLY EMERGENCY CASES, FOR THE DURATION OF THE LABOR DISPUTE.

- h) WITHIN FIVE (5) DAYS FROM THE ISSUANCE OF THE ASSUMPTION OR CERTIFICATION ORDER, A PRELIMINARY CONFERENCE OR HEARING SHALL IMMEDIATELY BE CONDUCTED BY THE OFFICE OF THE SECRETARY OF LABOR AND EMPLOYMENT, THE NATIONAL LABOR RELATIONS COMMISSION, OR THE VOLUNTARY ARBITRATOR OR PANEL OF VOLUNTARY ARBITRATORS AS THE CASE MAY BE.
- i) IN CASE OF ACTUAL OR IMPENDING STRIKE OR LOCKOUT IN INDUSTRIES THAT ARE NOT ENGAGED IN ESSENTIAL SERVICES, THE SECRETARY OF LABOR AND EMPLOYMENT MAY ASSUME JURISDICTION UPON JOINT REQUEST OF BOTH PARTIES IN THE LABOR DISPUTE AFTER THE MANDATORY CONCILIATION. EITHER OR

BOTH PARTIES MAY ALSO OPT TO SUBMIT TO COMPULSORY OR VOLUNTARY ARBITRATION.

- j) The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining industries that ARE ENGAGED IN ESSENTIAL SERVICES and from intervening at any time and assuming jurisdiction over any labor dispute in order to settle or terminate the same DURING SEVERE NATIONAL EMERGENCIES.

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 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 OF LABOR AND EMPLOYMENT.

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.

- b) Any worker whose employment has been terminated as a consequence of an ~~[unlawful]~~ ILLEGAL lockout shall be entitled to reinstatement with full back wages.

Mere participation of a worker OR UNION OFFICER in a ~~[lawful]~~ strike DECLARED ILLEGAL FOR FAILURE OF THE UNION TO COMPLY WITH PROCEDURAL REQUIREMENTS UNDER PARAGRAPH (A) OF THIS ARTICLE, shall not ~~[constitute sufficient]~~ BE A ground for termination of his OR HER employment, even if a replacement had been hired by the employer during such ~~[lawful]~~ ILLEGAL strike.

- c) No person shall obstruct, impede, or interfere with, 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.

Any WORKER OR union officer who knowingly participates ~~[in an illegal strike and any worker or union officer who knowingly participates]~~ in the commission of ~~[illegal]~~ UNLAWFUL acts during a strike may be declared to have lost his/her employment AFTER DUE PROCESS.

- d) No employer shall use or employ any strike-breaker, nor shall any person be employed as a strike-breaker.

- e) No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares.
- f) NO PUBLIC OFFICIAL OR EMPLOYEE, INCLUDING OFFICERS AND PERSONNEL OF THE ARMED FORCES OF THE PHILIPPINES OR THE PHILIPPINE NATIONAL POLICE, OR ARMED PERSON, PRIVATE SECURITY GUARDS AND SIMILAR PERSONNEL IN THE PRIVATE SECURITY AGENCY SHALL INTRODUCE OR ESCORT IN ANY MANNER REPLACEMENT WORKERS. THE POLICE FORCE SHALL KEEP OUT OF THE PICKET LINES UNLESS ACTUAL VIOLENCE OR OTHER CRIMINAL ACTS OCCUR THEREIN.

HOWEVER, THE SECRETARY OF LABOR AND EMPLOYMENT OR THE NATIONAL LABOR RELATIONS COMMISSION MAY SEEK THE ASSISTANCE OF LAW ENFORCEMENT AGENCIES TO MAINTAIN PEACE AND ORDER, PROTECT LIFE AND PROPERTY, AND/OR ENFORCE THE LAW AND LEGAL ORDER.

Section 3. Article 272 of the Labor Code is hereby amended to read as follows:

"Article 272. ~~[Penalties]~~ Fines.

- a) Any person, **EMPLOYER, ORGANIZATION OR CORPORATION FOUND** violating Article 264 of this Code shall be ~~[punished by a]~~ **FINED** ~~[of]~~ not less than ~~[one thousand pesos (P1,000.00)]~~ **TEN THOUSAND PESOS (P10,000.00)** nor more than ~~[ten thousand pesos (P10,000.00)]~~ **ONE HUNDRED THOUSAND PESOS (P100,000.00)** ~~[and/or imprisonment for not less than three months nor more than three (3) years, or both such fine and imprisonment,]~~ at the discretion of the ~~[court]~~ **NATIONAL LABOR RELATIONS COMMISSION**. ~~[Prosecution under this provision shall preclude prosecution for the same act under the Revised Penal Code, and vice versa.]~~
- b) Upon the recommendation of the Secretary of Labor and Employment and the Secretary of National Defense, foreigners who violate the provisions of this Title shall be subject to immediate and summary deportation by the ~~[Commission on]~~ **BUREAU OF** Immigration ~~[and Deportation]~~ AND shall be permanently barred from reentering the country without the special permission of the President of the Philippines."
- c) THE REGULAR COURTS SHALL HAVE JURISDICTION OVER ANY CRIMINAL ACTION ARISING FROM VIOLATION OF ANY OF THE PROVISIONS OF ART. 264 OF THE LABOR CODE, AS AMENDED, BUT SUBJECT TO THE REQUIRED CLEARANCE FROM THE DOLE ON CASES ARISING OUT OF OR RELATED TO A LABOR DISPUTE.

NO CRIMINAL PROSECUTION UNDER ARTICLE 264 MAY BE INSTITUTED WITHOUT A FINAL JUDGMENT THAT AN ILLEGAL STRIKE OR LOCKOUT HAS BEEN COMMITTED. THE PRESCRIPTIVE PERIOD OF

THE CRIMINAL OFFENSE SHALL BE CONSIDERED INTERRUPTED DURING THE PENDENCY OF ADMINISTRATIVE PROCEEDINGS: PROVIDED, HOWEVER, THAT THE FINAL JUDGMENT IN THE SAID PROCEEDINGS SHALL NOT BE BINDING IN THE CRIMINAL CASE NOR AN EVIDENCE OF GUILT.

- d) COMPLAINTS ON ACTS OR OMISSIONS OF PNP OR AFP PERSONNEL IN VIOLATION OF ARTICLE 264 OF THE LABOR CODE, AS AMENDED, SHALL BE FILED WITH THEIR RESPECTIVE AGENCY WITHOUT PREJUDICE TO THE FILING OF THE APPROPRIATE CASES BEFORE THE OMBUDSMAN.

Section 4. Implementing Rules and Regulations. - The Secretary of Labor and Employment shall promulgate the necessary rules and regulations to implement the provisions of this Act.

Section 5. Separability Clause. If any part or provision of this Act is declared unconstitutional or invalid, the remainder of this Act or the provisions not otherwise affected shall remain valid and subsisting.

Section 6. Repealing Clause.- All laws, presidential decrees, proclamations, executive orders, issuances, rules and regulations, or any part thereof, inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

Section 7. Effectivity. 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.