

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

House Bill No. 6014



Introduced by CIBAC Party-List Representatives
Eduardo "Bro. Eddie" C. Villanueva and Domingo C. Rivera

**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 THE PURPOSE ARTICLES 278[263], 279[264] and
287[272] OF PRESIDENTIAL DECREE 442, OTHERWISE KNOWN AS
THE LABOR CODE OF THE PHILIPPINES, AS AMENDED AND FOR
OTHER PURPOSES**

EXPLANATORY NOTE

Articles 278[263], 279[264] and 287[272] of the 1974 Labor Code of the Philippines, as amended, are remnants of Martial Rule, which over the years have been rendered inconsistent with the country's democratic principles and governance, and increasing use of "labor rights' clauses" in trade agreements, multilateral or otherwise.

The country has long departed from strong-arm rule and from fiercely adversarial industrial relations. Article XIII of 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 enforces mutual compliance 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, and regulates the relations between workers and employers,

labor justice administration since decisions by the Secretary of Labor to assume jurisdiction over a labor dispute have been seen as largely favoring employers, who at the same time, are the very first ones to ignore or resist return-to-work orders by filing numerous motions for reconsideration and appeals to higher courts. This is borne by the approximately ten (10) cases of trade union rights violations against the Philippine government before the International Labour Organization (ILO) and the US Trade Representatives.

State interventions in labor disputes under paragraph (g) of Article 278[263] of the Labor Code have been largely viewed as intrusive and an arbitrary exercise of police power. The Secretary of Labor and Employment is provided with very wide latitude of discretion to prevent an impending strike or lockout or to stop an ongoing strike or lockout by assuming jurisdiction over a labor dispute, which according to his/her own opinion, involve an "industry indispensable to national interest." This overbroad discretion has seen labor disputes in an undergarment factory, match sticks manufacturing, hotdog, chicha-corn and fish sauce factory being assumed by the Secretary of Labor after his determination that these industries are indispensable to the national interest.

Under paragraph (g) of Article 278[263], the State restrains the exercise of the right to strike or lockout and direct workers to return to work and the management to accept the striking workers under the same terms and conditions. Defiance of a return to work order or non-compliance with the procedural requirement for the conduct of a strike/lockout is a prohibited act under paragraph (a) of Article 279[264] that may result in loss of employment for union officers who knowingly participate in an illegal strike, including any worker who knowingly participate in the commission of illegal acts. Additionally, paragraph (a) of Article 287[272] imposes a fine of not less than Php1,000 nor more than Php10,000 and/or imprisonment of not less than three months nor more than three years, or both fine and imprisonment, at the discretion of the Court, for violation of any of the provisions of Article 264.

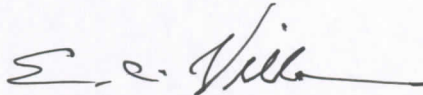
In this regard, both the ILO and the US Trade Representatives have observed that the penalties of loss of employment, fine and imprisonment for administrative non-compliance is disproportionate to the procedures laid down for notices of strike and on cooling-off periods, the absence of which would make the strike illegal.

Beginning July 2010, the Department of Labor and Employment (DOLE) implemented clear procedures and criteria for the exercise of the Secretary's assumption of jurisdiction power through a tripartite-supported department orders (Department Order No. 40-G-10, Series of 2010 and Department Order No. 40-H-13, Series of 2013). Under these issuances, the "indispensable to the national interest" criteria for assumption of jurisdiction was aligned with the ILO criteria of "essential services." Through this, the Constitutional mandate to use voluntary modes in dispute settlement through conciliation-mediation was expansively used and the institution of collective bargaining was strengthened. This has resulted in annual single digit actual strikes from July 2010 to June 2016 ushering relative industrial peace in the workplaces. According to the National Conciliation and Mediation Board (NCMB), from July 2010 to June 2016, there were 20 actual strikes, 22 assumed cases and 43 certified to the NLRC while the July 2004 to June 2010 labor relations data showed 69

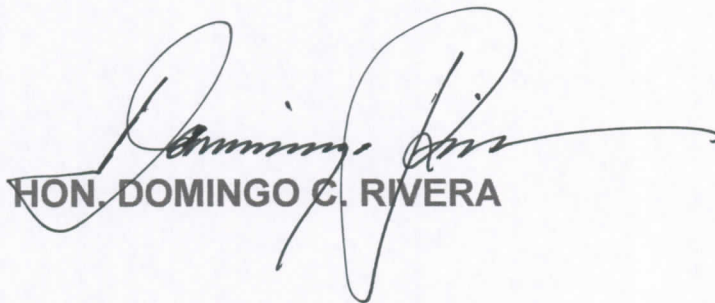
actual strikes, 140 assumed cases and 145 certified to the NLRC for compulsory arbitration.

Thus, the proposed bill seeks to amend Article 278[263], 279[264] and 287[272] of the Labor Code to rationalize government interventions in labor disputes by: (a) adopting the essential services criteria, i.e., functions or services which if interrupted would endanger the life, personal safety or health of whole or part of the population, in the exercise of the assumption or certification power of the Secretary of Labor and Employment, (b) providing clear conditions in its exercise, (c) requiring minimum service or operation in case an assumption order will issue, (d) decriminalizing non-compliance with the procedural requirements in the exercise of the right to strike, (e) providing fines for violation by employer, labor organization, or corporation, and (f) providing a procedure for prosecution of criminal acts committed during a strike or lockout.

The immediate passage of this bill is earnestly sought.



HON. EDUARDO "BRO. EDDIE" C. VILLANUEVA



HON. DOMINGO C. RIVERA

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

SECTION 1. Article 278 [263] of the Labor Code is hereby amended to read as follows:

“Article 278 [263]. Strikes, picketing and lockouts. –

- a) It is the policy of the State to encourage free trade unionism and free collective 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.

- 1
2 c) In case of bargaining deadlocks, the duly certified or recognized bargaining
3 agent may file a notice of strike or the employer may file a notice of lockout with
4 the [Ministry] DEPARTMENT OF LABOR AND EMPLOYMENT at least 30 days
5 before the intended date thereof. In cases of unfair labor practice, the period of
6 notice shall be 15 days and in the absence of a duly certified or recognized
7 bargaining agent, the notice of strike may be filed by any legitimate labor
8 organization in behalf of its members. However, in case of dismissal from
9 employment of union officers duly elected in accordance with the union
10 constitution and by-laws, which may constitute union busting where the
11 existence of the union is threatened, the 15 day cooling-off period shall not
12 apply and the union may take action immediately.
13
14 d) The notice must be in accordance with such implementing rules and regulations
15 as the [Minister] SECRETARY of Labor and Employment may promulgate.
16
17 e) During the cooling-off period, it shall be the duty of the [Ministry] DEPARTMENT
18 OF LABOR AND EMPLOYMENT to exert all efforts at the mediation and
19 conciliation to effect a voluntary settlement. Should the dispute remain
20 unsettled until the lapse of the requisite number of days from the mandatory
21 filing of notice, the labor union may strike or the employer may declare a
22 lockout.
23
24 f) A decision to declare a strike must be approved by a majority of the total union
25 membership in the bargaining unit concerned, obtained by secret ballot in
26 meetings or referenda called for that purpose. A decision to declare a lockout
27 must be approved by a majority of the board of directors of the corporation or
28 association or of the partners in a partnership obtained by secret ballot in a
29 meeting called for that purpose. The decision shall be valid for the duration of
30 the dispute based on substantially the same grounds considered when the
31 strike or lockout vote was taken. The [Ministry] DEPARTMENT OF LABOR
32 AND EMPLOYMENT may its own initiative or upon the request of any affected
33 party, supervise the conduct of the secret balloting. In every case, the union or
34 the employer shall furnish the [Ministry] DOLE the results of the voting at least
35 seven days before the intended strike or lockout, subject to the cooling-off
36 period herein provided.
37
38 g) When [in his opinion] there exists a labor dispute causing or likely to cause a
39 strike or lockout in an industry [indispensable to the national interest,]
40 ENGAGED IN ESSENTIAL SERVICES, the Secretary of Labor and
41 Employment may assume jurisdiction over the dispute, PROVIDED, THAT ANY
42 OF THE FOLLOWING CONDITIONS IS PRESENT:
43
44 1. BOTH PARTIES HAVE REQUESTED THE SECRETARY OF LABOR
45 AND EMPLOYMENT TO ASSUME JURISDICTION OVER THE LABOR
46 DISPUTE; OR
47
48 2. UPON REQUEST OR PETITION BY EITHER PARTY, OR *MOTU*
49 *PROPRIO* ON THE PART OF THE SECRETARY OF LABOR AND
50 EMPLOYMENT, PROVIDED, THAT A CONFERENCE CALLED BY

1 THE OFFICE OF THE SECRETARY ON THE PROPRIETY OF ITS
2 ISSUANCE HAS BEEN CONDUCTED.
3

4 IN SUCH CASE, THE SECRETARY OF LABOR AND EMPLOYMENT MAY
5 DECIDE OR CERTIFY THE LABOR DISPUTE TO THE NATIONAL LABOR
6 RELATIONS COMMISSION FOR COMPULSORY ARBITRATION, OR TO A
7 VOLUNTARY ARBITRATOR OR PANEL OF VOLUNTARY ARBITRATORS.
8

9 SAID ASSUMPTION SHALL HAVE THE EFFECT OF AUTOMATICALLY
10 ENJOINING AN IMPENDING STRIKE OR LOCKOUT. IF A
11 STRIKE/LOCKOUT HAS ALREADY TAKEN PLACE AT THE TIME OF
12 ASSUMPTION, ALL STRIKING OR LOCKED OUT EMPLOYEES AND OTHER
13 EMPLOYEES SUBJECT OF THE NOTICE OF STRIKE OR LOCKOUT SHALL
14 IMMEDIATELY RETURN TO WORK AND THE EMPLOYER SHALL
15 IMMEDIATELY RESUME OPERATIONS AND READMIT ALL EMPLOYEES
16 UNDER THE SAME TERMS AND CONDITIONS PREVAILING BEFORE THE
17 STRIKE OR LOCKOUT.
18

19 ESSENTIAL SERVICES REFER TO FUNCTIONS OR SERVICES
20 RENDERED BY AN ESTABLISHMENT, WHICH IF INTERRUPTED, WOULD
21 ENDANGER THE LIFE, PERSONAL SAFETY OR HEALTH OF WHOLE OR
22 PART OF THE POPULATION. FOR THIS PURPOSE, THE SECRETARY OF
23 LABOR AND EMPLOYMENT, BY APPROPRIATE REGULATIONS, SHALL
24 DETERMINE THE INDUSTRIES ENGAGED IN ESSENTIAL SERVICES
25 AFTER CONSULTATIONS WITH THE NATIONAL TRIPARTITE INDUSTRIAL
26 PEACE COUNCIL.
27

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

39 h) WITHIN FIVE (5) DAYS FROM THE ISSUANCE OF THE ASSUMPTION OR
40 CERTIFICATION ORDER, A PRELIMINARY CONFERENCE OR HEARING
41 SHALL IMMEDIATELY BE CONDUCTED BY THE OFFICE OF THE
42 SECRETARY OF LABOR AND EMPLOYMENT, THE NATIONAL LABOR
43 RELATIONS COMMISSION, OR THE VOLUNTARY ARBITRATOR OR
44 PANEL OF VOLUNTARY ARBITRATORS AS THE CASE MAY BE.
45

46 i) IN CASE OF ACTUAL OR IMPENDING STRIKE OR LOCKOUT IN
47 INDUSTRIES THAT ARE NOT ENGAGED IN ESSENTIAL SERVICES, THE
48 SECRETARY OF LABOR AND EMPLOYMENT MAY ASSUME
49 JURISDICTION UPON JOINT REQUEST OF BOTH PARTIES IN THE LABOR
50 DISPUTE AFTER EXHAUSTION OF MANDATORY CONCILIATION. EITHER

1 OR BOTH PARTIES MAY ALSO OPT TO SUBMIT TO COMPULSORY OR
2 VOLUNTARY ARBITRATION.
3

- 4 j) THE FOREGOING NOTWITHSTANDING, THE PRESIDENT OF THE
5 PHILIPPINES SHALL NOT BE PRECLUDED FROM DETERMINING
6 INDUSTRIES THAT ARE ENGAGED IN ESSENTIAL SERVICES, AND FROM
7 INTERVENING AT ANY TIME AND ASSUMING JURISDICTION OVER ANY
8 LABOR DISPUTE IN ORDER TO SETTLE OR TERMINATE THE SAME
9 DURING SEVERE NATIONAL EMERGENCIES.
10

11 **SECTION 2.** Article 279 [264] of the Labor Code is hereby amended to read as follows:
12

13 **"Article 279 [264]. Prohibited Activities.-**
14

- 15 a) No labor organization or employer shall declare a strike or lockout without first
16 having bargained collectively in accordance with Title VII of this Book or
17 without first having filed the notice required in the preceding Article or
18 without the necessary strike or lockout vote first having been obtained and
19 reported to the [Ministry] DEPARTMENT OF LABOR AND EMPLOYMENT.
20

21 No strike or lockout shall be declared after assumption of jurisdiction by the
22 President or the [Minister] SECRETARY or after certification or submission of
23 the dispute to compulsory or voluntary arbitration or during the pendency of
24 cases involving the same grounds for the strike or lockout.
25

26 Any worker whose employment has been terminated as a consequence of
27 [any unlawful] AN ILLEGAL lockout shall be entitled to reinstatement with full
28 backwages. Any WORKER OR union officer who knowingly participates [in
29 an illegal strike and any worker or union officer who knowingly participates] in
30 the commission of [illegal] UNLAWFUL acts during a strike may be declared
31 to have lost his/HER employment AFTER DUE PROCESS. [Provided, That]
32 Mere participation of a worker OR UNION OFFICER in a [lawful] strike
33 DECLARED ILLEGAL FOR FAILURE OF THE UNION TO COMPLY WITH
34 PROCEDURAL REQUIREMENTS UNDER PARAGRAPH (A) OF THIS
35 ARTICLE, shall not [constitute sufficient] BE A ground for termination of his
36 OR HER employment, even if a replacement had been hired by the employer
37 during such [lawful] ILLEGAL strike.
38

- 39 b) No person shall obstruct, impede, or interfere with, by force, violence,
40 coercion, threats or intimidation, any peaceful CONCERTED ACTION
41 INCLUDING picketing by employees during any labor controversy or in the
42 exercise of the right of self-organization or collective bargaining, or shall aid
43 or abet such obstruction or interference.
44

- 45 c) No employer shall use or employ any strike-breaker, nor shall any person be
46 employed as a strike-breaker.
47

- 48 d) No public official or employee, including officers and personnel of the [New]
49 Armed Forces of the Philippines or the [Integrated] PHILIPPINE National
50 Police, or armed person, PRIVATE SECURITY GUARDS AND SIMILAR

1 PERSONNEL IN THE PRIVATE SECURITY AGENCY shall bring in,
2 introduce or escort in any manner, [any individual who seeks to replace
3 strikers in entering or leaving the premises of a strike area, or work in the
4 place of the strikers] REPLACEMENT WORKERS. The police force shall
5 keep out of the picket lines unless actual violence or other criminal acts occur
6 therein[: Provided, That nothing herein shall be interpreted to prevent any
7 public officer from taking any measure necessary] HOWEVER, THE
8 SECRETARY OF LABOR AND EMPLOYMENT OR THE NATIONAL LABOR
9 RELATIONS COMMISSION MAY SEEK THE ASSISTANCE OF LAW
10 ENFORCEMENT AGENCIES to maintain peace and order, protect life and
11 property, and/or enforce the law and legal orders.
12

- 13 e) No person engaged in picketing shall commit any act of violence, coercion or
14 intimidation or obstruct the free ingress to or egress from the employer's
15 premises for lawful purposes, or obstruct public thoroughfares.
16

17 **SECTION 3.** Article 287 [272] of the Labor Code is hereby amended to read as follows:
18

19 **"Article 287 [272]. [Penalties] FINES.**
20

- 21 a) Any person, EMPLOYER, LABOR ORGANIZATION OR CORPORATION
22 FOUND violating any of the provisions of Article 264 of this Code shall be
23 punished by a fine of not less than [one thousand pesos (P1,000.00)] TEN
24 THOUSAND PESOS (P10,000.00) nor more than [ten thousand pesos
25 (P10,000.00)] ONE HUNDRED THOUSAND PESOS (P100,000.00) [and/or
26 imprisonment for not less than three months nor more than three (3) years,
27 or both such fine and imprisonment,] at the discretion of the [court]
28 NATIONAL LABOR RELATIONS COMMISSION. [Prosecution under this
29 provision shall preclude prosecution for the same act under the Revised Penal
30 Code, and vice versa.]
31
- 32 b) Upon the recommendation of the [Minister] SECRETARY of Labor and
33 Employment and the [Minister] Secretary of National Defense, foreigners who
34 violate the provisions of this Title shall be subject to immediate and summary
35 deportation by the [Commission on] BUREAU OF Immigration [and
36 Deportation] and shall be permanently barred from re-entering the country
37 without the special permission of the President of the Philippines.
38
- 39 c) THE REGULAR COURTS SHALL HAVE JURISDICTION OVER ANY
40 CRIMINAL ACTION ARISING FROM VIOLATION OF ANY OF THE
41 PROVISIONS OF ARTICLE 264 OF THE LABOR CODE, AS AMENDED,
42 SUBJECT TO THE REQUIRED CLEARANCE FROM THE DEPARTMENT OF
43 LABOR AND EMPLOYMENT ON CASES ARISING OUT OF OR RELATED
44 TO A LABOR DISPUTE.
45

46 NO CRIMINAL PROSECUTION UNDER ARTICLE 264 MAY BE INSTITUTED
47 WITHOUT A FINAL JUDGMENT THAT AN ILLEGAL STRIKE OR LOCKOUT
48 HAS BEEN COMMITTED. THE PRESCRIPTIVE PERIOD OF THE CRIMINAL
49 OFFENSE SHALL BE CONSIDERED INTERRUPTED DURING THE
50 PENDENCY OF ADMINISTRATIVE PROCEEDINGS: PROVIDED,

1 HOWEVER, THAT THE FINAL JUDGMENT IN THE SAID PROCEEDINGS
2 SHALL NOT BE BINDING IN THE CRIMINAL CASE NOR SHALL IT
3 CONSTITUTE AS AN EVIDENCE OF GUILT.
4

- 5 d) COMPLAINTS ON ACTS OR OMISSIONS OF THE PERSONNEL OF THE
6 PHILIPPINE NATIONAL POLICE OR THE ARMED FORCES OF THE
7 PHILIPPINES IN VIOLATION OF ARTICLE 264 OF THIS CODE SHALL BE
8 FILED WITH THE CONCERNED AGENCY, WITHOUT PREJUDICE TO THE
9 FILING OF THE APPROPRIATE CASES BEFORE THE OMBUDSMAN.
10

11 **SECTION 4. Implementing Rules and Regulations.** – Within sixty (60) days from
12 the effectivity of this Act, the Secretary of Labor and Employment, in consultation with
13 the relevant stakeholders, shall promulgate the necessary rules and regulations to
14 implement the provisions of this Act.
15

16 **SECTION 5. Separability Clause.** - If any part or provision of this Act is declared
17 unconstitutional or invalid, the remainder of this Act or the provisions not otherwise
18 affected shall remain valid and subsisting.
19

20 **SECTION 6. Repealing Clause.** - All laws, presidential decrees, proclamations,
21 executive orders, issuances, rules and regulations, or any part thereof, inconsistent
22 with the provisions of this Act are hereby repealed, amended or modified
23 accordingly.
24

25 **SECTION 7. Effectivity.** - This Act shall take effect fifteen (15) days after its complete
26 publication in the official gazette or in at least two (2) newspapers of national
27 circulation.
28

29
30 **Approved,**