Part II: Labor Dispute Resolution in the Philippines

Domingo P. Disini, Jr.

I. Policy Statement

1. Introductory Statement

There are two distinct methods of labor dispute settlement in the Philippines, namely, the (a) preferred method of collective bargaining and voluntary arbitration, and (b) compulsory arbitration of labor disputes in industries indispensable to the national interest when invoked by the State or by government agencies exercising quasi-judicial functions when invoked by either, or both, labor and management.

2. Voluntarism: Preferred Method of Dispute Settlement

The Philippine Constitution specifically states that *voluntarism, i.e.,* collective bargaining and voluntary arbitration, are the preferred methods of dispute settlement.

> ARTICLE XIII, Social Justice and Human Rights,
> xxx
> Labor
> Section 3. x x x
> The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes of settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace (emphasis supplied).

The preferred methods of collective bargaining and voluntary arbitration are based on the widely accepted principle that real and lasting industrial peace must be firmly based on a free and voluntary agreement between labor and the employer and cannot be legislated or imposed by law. The role of law and government agencies is minimal, and limited only to providing a legal framework for the mechanics of the system, and assistance when requested by either or both labor and management.

3. Compulsory Arbitration as a Method of Labor Dispute Settlement

Compulsory arbitration as a mode of labor dispute settlement is used only in two instances: (a) involving labor disputes in industries indispensable to the national interest, and (b) where action or suit is brought by either party for alleged violation of the *Labor Code.*

3.1 Labor Disputes in Industries Indispensable to the National Interest

The pertinent provision of the Labor Code reads:

> Article 263. *Strikes, Picketing and Lockouts* -
> 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 Commission for compulsory arbitration…
> x x x
>
> The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that, in his opinion, are indispensable to the national interest, and from intervening at any time and assuming jurisdiction over such labor dispute in order to settle or terminate the same.

This policy is based on the recognition that the state must settle a labor dispute in the national interest as soon as possible without resort to the use of economic weapons, either by labor or the employer and relieve the public from unwarranted inconvenience and the consequences of a prolonged industrial conflict.

3.2 Violations and Enforcement of the Provisions of Labor Code

Labor disputes alleging violations of the Labor Code, or labor law, implementation are remedied and enforced through a complaint procedure provided by the Code. While the enforcement and settlement procedures are not specifically denominated or characterized as *compulsory arbitration,* the same is in effect, and to all intents and purposes, compulsory arbitration, i.e., official adjudication of a labor dispute initially by a state agency exercising quasi-judicial function, and finally by the regular Courts of law, on appeal.

This procedure is based on the recognition that the use of economic weapons or sanctions, i.e., the withholding of labor by workers or work opportunity by an employer, cannot be sanctioned as the law itself provides for a peaceful method for enforcement of rights and obligations. The State plays an active and dominant role in this process, while that of either or both parties is virtually non-existent.

The provisions of law cited in this paper, specifically of Presidential Decree No. 442, *The Labor Code of the Philippines*, as amended (1974) are quoted verbatim as easy reference for the reader. Statistical data is cited in tabular form to indicate the extent of the use of collective bargaining, voluntary arbitration, and compulsory arbitration, as methods of dispute settlement, as well as to show the workload and accomplishment of the agencies of the Department of Labor and Employment.

II. Methods of Dispute Settlement: Compulsory Arbitration, Collective Bargaining, and Voluntary Arbitration

The two contrasting methods of dispute settlement will be described separately. The process of *Compulsory Arbitration* will first be described as background material, followed by the State preferred alternative method of voluntarism, i.e. Collective Bargaining and Voluntary Arbitration.

1. Compulsory Arbitration

1.1 Historical Background

Compulsory Arbitration as a method of labor dispute settlement has a long history in the Philippines, and was first adopted in 1936. The 1935 Constitution of the Philippines provided:

> The promotion of social justice to insure the well being and economic security of all the people should be the concern of the State (Article II, Declaration of Principles, Section 5).
>
> The State shall afford protection to labor, especially to workingwomen and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture. *The State may provide for compulsory arbitration* (Article XIV, General Provisions, Section 6, Underscoring supplied).

Pursuant to the above Constitutional mandate, the Philippine legislature enacted in 1936, Commonwealth Act No. 103, "An Act to Afford Protection of Labor by Creating a Court of Industrial Relations … and to Enforce Compulsory Arbitration Between Employers or LandLords, and Employers or Tenants, Respectively, and by Prescribing Penalties for the Violations of its Orders."

The method, practice, and principles of *compulsory arbitration*, has withstood the test of time and up to this day remains the principal method of dispute settlement in industries indispensable to the national interest, and in labor law enforcement, i.e., putting into force the provisions of the Labor Code of the Philippines.

1.2 Arbitrable Issues

Disputes that are subject to compulsory arbitration under the Labor Code are:

(i) Labor disputes in industries indispensable to the national interest, when the Secretary of Labor and Employment (a) assumes jurisdiction and decides the dispute, or (b) certifies the same to the National Labor Relations Commission for compulsory arbitration, or (c) when the President of the Philippines assumes jurisdiction and settles the dispute. (Article 263 (g) Labor Code)

(ii) Labor disputes involving the enforcement of provisions of the Labor Code of the Philippines. Arbitrable issues would involve:

- Training and Employment of Special Workers: (a) apprentices; (b) learners; (c) handicapped workers
- Conditions of Employment:
  - Working conditions and rest periods: hours of work; weekly rest periods; holidays, service incentive leaves; and service charges.
  - Wages: minimum wage rates; payment of wages; prohibitions regarding wages.
  - Working conditions for special groups of employees: women; minors; house helpers; home-workers.
- Labor Relations
  - Unfair Labor Practices

The wide range of arbitrable disputes indicates the all-encompassing active role of government in labor dispute settlement whenever the exercise of arbitral powers is invoked by either or both parties to the dispute.

Compulsory arbitration as a method of dispute settlement of labor issues enhances the role of lawyers who, historically, have played, and still continue to play, an active role in labor-management relations. Moreover, administrative agencies exercising quasi-judicial functions, and justices of the appellate courts are also lawyers. It is, then, true to say that compulsory arbitration is almost always a lawyer's affair.

1.3 Agencies of the Executive Department Exercising Quasi-Judicial Functions

A. Office of the President of the Philippines

Labor Disputes in Industries Indispensable to the National Interest - The Labor Code authorizes the President of the Philippines to determine which industries are indispensable to the national interest, and to adjudicate labor disputes in these industries through the process of compulsory arbitration.

The pertinent provision of the Labor Code of the Philippines reads:

> Article 263. *Strikes, Picketing and Lockouts* –
> x x x
> (g) The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that, in his opinion, are indispensable to the national interest, and from intervening at any time and assuming jurisdiction over any labor dispute in such industries in order to settle or terminate the same.

B. Office of the Secretary of Labor and Employment

a. Labor Disputes in Industries Indispensable to the National Interest

The Secretary of Labor and Employment is authorized to assume jurisdiction and settle labor disputes in industries indispensable to the national interest by compulsory arbitration. The pertinent provision of the Labor Code, reads:

> Article 263. Strikes, Picketing, and Lockouts –

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 Commission for compulsory arbitration.
xxx

In line with the national concern for and the highest respect accorded to the right of patients to life and health, strikes and lockouts in hospitals, clinics and similar medical institutions shall, to every extent possible, be avoided, and all serious efforts, not only by labor and management but government as well, be exhausted to substantially minimize, if not prevent, their adverse effects on such life and health, through the exercise, however legitimate, by labor of its right to strike and by management to lockout. xxx In such cases therefore, the Secretary of Labor and Employment may immediately assume, within twenty four (24) hours from knowledge of the occurrence of such a strike or lockout, jurisdiction over the same or certify it to the Commission for compulsory arbitration. xxx

b. Appellate Jurisdiction

(a) Decisions or Awards of Med-Arbiter

The Labor Code confers appellate jurisdiction on the Secretary of Labor and Employment over decisions of the Med-Arbiters of the Bureau of Labor Relations in Certification Election cases. The settlement of a *certification election* is an administrative–investigatory procedure for the (i) determination of an alleged claim of majority status in a defined appropriate bargaining unit and (ii) the designation of a union as the exclusive bargaining representative for the purpose of collective bargaining. The pertinent provision of the Labor Code, reads:

Article 259. *Appeal from Certification Election Orders.* - Any party to an election may appeal the order or results of the election as determined by the Med-Arbiter, directly to the Secretary of Labor and Employment on the ground that the rules and regulations or parts thereof established by the Secretary of Labor and Employment for the conduct of the election have been violated. Such appeal shall be decided within fifteen (15) days.

(b) Orders Issued by Duly Authorized Representative in Exercise of Visitorial Power

Art. 128. x x x
An order issued by a duly authorized representative of the Secretary of Labor and Employment under this article may be appealed to the latter.

c. Visitorial Powers of the Secretary of Labor and Employment

The Secretary of Labor and Employment or his duly authorized representative in the exercise of visitorial and enforcement power, has broad authority to enforce the provisions of the Labor Code and to issue compliance orders. The pertinent provision of the Labor Code reads:

> Article 128. *Visitorial and Enforcement Power* - The Secretary of Labor or his duly authorized representatives … shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.
>
> (b) Notwithstanding the provisions of Article 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation…

Cases involving violations of apprenticeship agreements (Article 65, Labor Code) will also be investigated under the visitorial and enforcement powers of the Secretary of Labor and Employment (Article 128).

In actual practice, there are two types of inspections: (a) routine inspection where there is no complaint; and (b) inspection when there is a complainant.

C. Regular Bureaus of the Department of Labor and Employment

a. Regional Director: Small Money Claims

The Regional Directors in the Regional Offices of the Department of Labor and Employment are authorized to adjudicate small money claims subject to certain conditions, namely: (a) basis of claim; (b) amount of each claim; and (c) absence of claim for reinstatement. The pertinent provision of the Labor Code reads:

> Article 129. *Recovery of Wages, Simple Money Claims and Other Benefits.* - Upon complaint of any interested party, the regional director of the Department of Labor and Employment or any of the duly authorized hearing officers of the Department is empowered,

through summary proceedings and after due notice, to hear and decide any matter involving the recovery of wages and other monetary claims and benefits, including legal interest, owing to an employee or person employed in domestic or household service or househelper under this Code, arising from employer-employee relations: Provided, That such complaint does not include a claim for reinstatement: Provided, further, That the aggregate money claims of each employee or househelper does not exceed Five thousand pesos (P5,000.00)…

Any decision or resolution of the regional director or hearing officer pursuant to this provision may be appealed on the same grounds provided in Article 223 of this Code, within five (5) calendar days from receipt of a copy of said decision or resolution, to the National Labor Relations Commission which shall resolve the appeal within ten (10) calendar days from the submission of the last pleading required or allowed under its rules.

b. Bureau of Labor Relations

(a) Inter-union and intra-union disputes

The Bureau of Labor Relations has original and exclusive jurisdiction over all inter-union and intra-union conflicts, and disputes affecting labor-management relations, subject to certain exceptions. An employer may be drawn into inter-union and intra-union conflicts when several unions claim remittances of union dues and other assessments. The pertinent provision of the Labor Code reads:

Article 226. *Bureau of Labor Relations* – The Bureau of Labor Relations and the Labor Relations Divisions in the regional offices of the Department of Labor shall have original and exclusive authority to act, at their own initiative or upon request of either or both parties, on all inter-union and intra-union conflicts, and all disputes, grievances or problems arising from or affecting labor-management relations in all workplaces whether agricultural or non-agricultural, except those arising from the implementation or interpretation of collective bargaining agreements which shall be the subject of grievance procedure and/or voluntary arbitration.
x x x

Inter-union and intra-union conflicts are adjudicated by a *Med-Arbiter* who is an officer in the Regional Office or in the Bureau of Labor Relations (Rule I, Section 1 (qq), Department Order No. 09, Series of 1997, Department of Labor and Employment).

(b) Certification Elections and Appropriate Bargaining Unit

The Bureau of Labor Relations likewise has the authority to conduct

Certification Elections to determine claims of majority representation in an appropriate bargaining unit for the purpose of collective bargaining, and to determine the appropriateness of a bargaining unit.

The pertinent provision of the Labor Code reads:

> Article 232. *Prohibition on Certification Election* – The Bureau shall not entertain any petition for certification elections or any action, which may disturb the administration of agreements affecting the parties . . .

The certification election function is performed by Election Officers assigned by the Bureau of Labor Relations or the regional offices, to conduct and supervise certification elections (Rule I, Section 1 (mm), Department Order No. 09, Series of 1997, Department of Labor and Employment).

Med-Arbiters are members of the Philippine Bar, with four (4) years of relevant experience (*See* also Letter of Chairman, Civil Service Commission to the Secretary, Department of Labor and Employment, November 25, 1994).

The workload of the Bureau of Labor Relations for the Years 1999 and 2000 is shown below.

Original and Appealed Med-Arbitration Cases

	1999	2000	2001
Original med-arbitration Cases handled Disposition rate (%)	696 72%	844 73%	67 31%
Appealed med-arbitration Cases handled Disposition rate (%)	386 84%	394 83%	261 49%
Money claims Cases handled Disposition rate (%)	5528 87%	5591 96%	

Source: Table 51. Current Labor Statistics, Second Quarter 2001. Bureau of Labor and Employment Statistics, Department of Labor and Employment.

The Disposition rate of med-arbitration cases is low (less than 75%). The number of decisions appealed is high (70%). It may be noted, however, that the disposition rate of appealed cases is also high (more than 80%).

D. Agencies Attached to the Department of Labor and Employment

a. National Labor Relations Commission

The National Labor Relations Commission is an agency attached to the Department of Labor and Employment for program and policy coordination only. The Commission has (a) original and exclusive jurisdiction in the first instance, and (b) appellate jurisdiction to hear and adjudicate cases as specified in the Labor Code.

(a) Original and Exclusive Jurisdiction

Issuance of Labor Injunction - The Commission has original and exclusive jurisdiction to issue an injunction in a labor dispute. The pertinent provision of the Labor Code reads:

> Art. 218. *Powers of the Commission* – The Commission shall have the power and authority:
> x x x
> (e) To enjoin or restrain any actual or threatened commission of all prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party: Provided, That no temporary or permanent injunction in any case involving or growing out of a labor dispute as defined in this Code shall be issued except after hearing the testimony of witnesses with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and only after a finding of fact by the Commission, to the effect:

(i) That prohibited or unlawful acts have been threatened and will be committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat, prohibited or unlawful act, except against the person or persons, association or organization making the threat or committing the prohibited or unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;
(ii) That substantial and irreparable injury to complainant's property will follow;
(iii) That as to each item of relief to be granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;
(iv) That complainant has no adequate remedy at law; and
(v) That the public officers charged with the duty to protect complainant's

property are unable or unwilling to furnish adequate protection.

(vi) Such hearing shall be held after due and personal notice thereof has been served, in such manner as the Commission shall direct to all known persons against whom relief is sought, and also to the Chief Executive and other public officials of the province or city within which the unlawful acts have been threatened or committed - charged with the duty to protect complainant's property: Provided, however, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the Commission in issuing a temporary injunction upon hearing after notice. Such a temporary restraining order shall be effective for no longer than twenty (20) days and shall become void at the expiration of said twenty (20) days. No such temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the Commission sufficient to recompense those enjoined for any loss, expense or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs, together with a reasonable attorney's fee, and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the Commission.

The undertaking herein mentioned shall be understood to constitute an agreement entered into by the complainant and the surety upon which an order may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages, of which hearing complainant and surety shall have reasonable notice, the said complainant and surety, submitting themselves to the jurisdiction of the Commission for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity…

Wage Distortion Disputes

The Labor Code confers original and exclusive jurisdiction on the Commission, over wage distortion cases where there is no collective bargaining agreement or a recognized labor union in an establishment. The pertinent provision of the Labor Code reads:

Article 124. Standard Criteria for Minimum Wage Fixing - x x x

Where the application of any prescribed wage increase by virtue of a law or Wage Order issued by any Regional Board results

in distortions of the wage structure within an establishment…

> In cases where there are no collective agreements or recognized labor unions, the employers and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and, if it remains unresolved after ten (10) calendar days of conciliation, shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC). It shall be mandatory for the NLRC to conduct continuous hearings and decide the dispute within twenty (20) calendar days from the time said dispute is submitted for compulsory arbitration.

In practice, the initial complaint or action involving a wage distortion may be brought before a plant level labor-management grievance mechanism if the same exists; or if no such grievance mechanism is available then to the National Conciliation and Mediation Board for preventive mediation. If the wage distortion dispute remains unresolved, then the dispute is submitted to the National Labor Relations Commission for compulsory arbitration.

A *wage distortion* is defined by the same article.

> Art. 126. …a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical basis of differentiation.

(b) Appellate Jurisdiction

Decisions and Awards of Labor Arbiters - The Commission has exclusive appellate jurisdiction over cases decided by Labor Arbiters. The pertinent provision of the Labor Code reads:

> Art. 217. Jurisdiction … and the Commission. - xxx
> (b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

Decisions and Awards of Regional Directors- The Commission has original and exclusive jurisdiction over all decisions of the Regional Director in small money claims cases. The pertinent provision of the Labor Code reads:

> Article 129. Recovery of Wages, Simple Money Claims and Other Benefits - xxx

> Any decision or resolution of the Regional Director or hearing officer pursuant to this provision may be appealed on the same grounds provided in Article 223 of this Code, within five calendar days from receipt of said decisions or resolutions, to the National Labor Relations Commission . . .

Delegated Jurisdiction - The Labor Code authorizes the Secretary of Labor and Employment to certify a labor dispute in an industry indispensable to the national interest for compulsory arbitration by the National Labor Relations Commission. The pertinent provision of the Labor Code reads:

> Article 263. Strikes, Picketing and Lockouts - xxx
> xxx
> (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 certify the same to the Commission for compulsory arbitration.

(c) Composition, and Qualification of NLRC Chairman and Commissioners

The composition and qualification of the Chairman and members of the Commission are provided by the Labor Code. The pertinent provisions of the Code read:

> Article 213. *National Labor Relations Commission* - There shall be a National Labor Relations Commission which shall be attached to the Department of Labor and Employment for program and policy coordination only, composed of a Chairman and fourteen (14) Members.
>
> Five (5) members each shall be chosen from among the nominees of the workers and employers organizations, respectively. The Chairman and the four (4) remaining members shall come from the public sector, with the latter to be chosen from among the recommendees of the Secretary of Labor and Employment.
>
> Upon assumption into office, the members nominated by the workers and employers organizations shall divest themselves of any affiliation with or interest in the federation or association to which they belong.
>
> The Commission may sit *en banc* or in five (5) divisions, each composed of three (3) members. Subject to the penultimate sentence of this paragraph, the Commission shall sit *en banc* only for purposes

of promulgating rules and regulations governing the hearing and disposition of cases before any of its divisions and regional branches and formulating policies affecting its administration and operations. The Commission shall exercise its adjudicatory and all other powers, functions and duties through its divisions.

x x x

Article 215. *Appointment and Qualifications* - The Chairman and other Commissioners shall be members of the Philippine Bar and must have been engaged in the practice of law in the Philippines for at least fifteen (15) years, with at least five (5) years experience or exposure in the field of labor-management relations and shall preferably be residents of the region where they are to hold office…

b. Labor Arbiters

The office of the Labor Arbiter is on integral part of the National Labor Relations Commission.

(a) Jurisdiction

The jurisdiction of the Labor Arbiter is provided by the Labor Code as follows:

Art. 217. *Jurisdiction of Labor Arbiters. . .* - (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

1. Unfair labor practice cases;
2. Termination disputes;
3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
5. Cases arising from any violation of Article 264 (Prohibited Activities) of this Code, including questions involving the legality of strikes and lockouts; and
6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding Five thousand pesos (P5, 000.00), regardless of whether accompanied with a claim for reinstatement or not.

Labor Arbiters also have original and exclusive jurisdiction over money claims

of migrant workers.

> Section 10. *Money Claims*. Nothwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages. (R.A. No. 8042, Migrant Workers and Overseas Filipinos Act of 1995)

It may be noted that while Article 217 provides for original and exclusive jurisdiction of the Labor Arbiter, the same may likewise be exercised by the President of the Philippines or the Secretary of the Labor and Employment in the exercise of their power of compulsory arbitration (Labor Code, Article 263 (g)), and by the Voluntary Arbitrator or Panel of Voluntary Arbitrators by joint and voluntary agreement of labor and employer (Labor Code, Article 262).

Decisions, awards, or orders of the Labor Arbiter may be appealed to the National Labor Relations Commission. The pertinent provisions of the Labor Code provides:

> Article 223. *Appeal* - Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards or orders. Such appeal may be entertained only on any of the following grounds:
>
> (a) If there is *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter;
>
> (b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;
>
> (c) If made purely on questions of law; and
>
> (d) If serious errors in the findings of facts were rose which would cause grave or irreparable damage or injury to the appellant.

(b) Delegated Function

The National Labor Relations Commission in labor injunction cases may delegate to the Labor Arbiter the authority to conduct hearings. The pertinent provision of the Labor Code reads:

Article 218. Powers of the Commission - xxx

(e) the reception of evidence for the application of a writ of injunction may be delegated by the Commission to any of its Labor Arbiters who shall conduct such hearings in such places as he may determine to be accessible to the parties and their witnesses and shall submit thereafter his recommendation to the Commission.

(c) Qualifications

The Labor Code states the qualifications of Labor Arbiters:

Art. 215. *Appointment and Qualifications* - ... The Executive Labor Arbiters and Labor Arbiters shall likewise be members of the Philippine Bar and must have been engaged in the practice of law in the Philippines for at least seven (7) years, with at least three (3) years experience or exposure in the field of labor-management relations: Provided, however, that incumbent Executive Labor Arbiters and Labor Arbiters who have been engaged in the practice of law for at least five (5) years may be considered as already qualified for purposes of reappointment as such under this Act.

The accomplishments of the National Labor Relations Commission and Labor Arbiters for the years 2000 – and First Semester 2001 are shown below.

NLRC Case Load 2000 - 2001

	Start of Yr. Balance	Cases Received w/in the Yr.	Total Cases	Disposed Cases	Unresolved Cases
2000	5,243	10,453	15,696	8,216	7,480
2001	7,480	4,782*	12,262*	4,173*	8,089*
% change	42.7%				

Source: National Labor Relations Commission, Budget Presentation FY 2002.

The above data shows the following:

1. In year 2000, the rate of accomplishment was 52%
2. In the First Semester of 2001, the rate of accomplishment was 34%.

NLRC's Accomplishment vs. Planned Target

Year 1999 and 2000

Year	Actual	Target	% Accomp.
1999 and earlier	3,515	5,243	67%
2000	4,701	3,137	149.9%

Source: National Labor Relations Commission. Budget Presentation FY 2002

The above data shows:

1. The years prior to 2000 fell short by 33% of the targeted number of cases to be resolved
2. By year 2000, a dramatic improvement in the fast resolution of cases was evident due to a 150% accomplishment rate by year end
3. The amount awarded to workers reached P1.8B and the number of workers who benefited, totaled 13,990

First Semester 2001 vs. Previous Years

Year	Actual	Target	%Accomp.	Benefits
2000 &	2,748	3,741	73.5%	
2001 (1st sem)	1,425	1.374	103.7%	

Source: National Labor Relations Commission. Budget Presentation by 2002

The data shows:

1. The 1st semester performance fell short of the targeted number of cases to be resolved, by 26.5%
2. By 2001 (1st semester), the resolution of cases was expedited raising the accomplishment rate to 103.7%
3. As of June 2001, the amount awarded to workers reached P390.7M and the number of workers who benefited, totaled 5,376

The NLRC also reported that the Supreme Court of the Philippines affirmed 89% of its Decisions appealed to the Court. This is a high rate of affirmance.

Labor Arbitration (2000 – 2001)
(5 Divisions)

Year	Start of Year Balance	Cases Received w/in the Year	Total Cases	Disposed Cases	Unresolved Cases
2000	14,063	28,438	42,501	28,599	13,902
2001	13,902	15,065*	28,967	13,203*	15,764*
% change	-1.14	*as of 1st Semester			

Source: National Relations Commission. Budget Presentation FY 2002.

The data shows that:

1. In year 2000, the rate of disposed cases was 67% (28,599)
2. In the 1st semester of 2001, the rate of accomplishment was 46% (13,203).

Regional Arbitration Branches
Performance *vs*. Planned Targets

1)

Year	Actual	Target	% Accomp.
1999	11, 718	14, 063	83.3%
Early 2000	16, 881	17, 829	94.7%

Source: National Labor Relations Commission. Budget Presentation 2002. Figures based on age of cases.

The data shows:

1. Prior to the year 2000, the number of cases resolved, reflected an 83.3% accomplishment rate compared with targets
2. By year end of 2000, the accomplishment rate improved and increased by 94.7%
3. In the year 2000, the conciliation and mediation efforts program resulted in the disposition of 10,114 cases through amicable settlement. This indicates a 10.9% improvement over the 994 cases settled on 1999.

2)

Year	Actual	Target	% Accomp.
2000	7,794	6,954	112.1%
2001	5,409	9,396	57.6%

Source: National Labor Relations Commission, Budget Presentation FY 2002. *Limitation – correcting inclusive dates

The data shows:

1. A high accomplishment rate of 112.1% in the 1st semester figures over years prior to 2001
2. For the first half of 2001, the accomplishment rate was at 57.6%

LABOR DISPUTE SETTLEMENT IN THE PHILIPPINES

NATURE OF DISPUTE AND ADJUDICATING AGENCIES

LABOR STANDARDS AND LABOR RELATIONS

ISSUES: PRIVATE SECTOR

NATURE OF DISPUTE	WHERE COMPLAINT FILED - INITIAL ADJUDICATION	FLOW OF APPEALS
Violation of apprentice agreement (65)	Regional Director – DOLE	DOLE Secretary Court of Appeals Supreme Court
Wage order promulgated by the Regional Tripartite Wages and Productivity Boards. (123)		National Wages and Productivity Commission (123) NLRC Court of Appeals Supreme Court
Violations which may aid in enforcement of the Labor Code, any Labor Law, Wage Order or Rules and Regulations issued by Agency (128)	No complaint. Violation discovered in course of Visitorial and Enforcement Power of Secretary (DOLE) or authorized representative, or upon complaint.	DOLE Secretary Court of Appeals Supreme Court
Recovery of wages, simple money claims and other benefits. Aggregate money claim of each complainant does not exceed P5,000.00. No claim for reinstatement (129)	Regional Director (DOLE)	National Labor Relations Commission (129) Court of Appeals Supreme Court
Disputes arising from inter-	Labor Management Committee of the	Court of Appeals Supreme Court

pretation or implementation of the Productivity Incentives Act of 1990 (Sec. 9, R.A. No. 6971)	establishment, with the assistance of the National Conciliation and Mediation Board (NCMB). *Voluntary Arbitration* (Sec. 9, R.A. No. 6971)	

NOTE: *Labor dispute* refers to controversies where there exists an employer-employee relationship between the parties.

Numbers in () refer to Article Number of the Labor Code of the Philippines (P.D. No. 447 as amended). Article or Section numbers of other laws are indicated with the specific Act. DOLE = Department of Labor and Employment; NLRC = National Labor Relations Commission

NATURE OF DISPUTE	WHERE COMPLAINT FILED - INITIAL ADJUDICATION	FLOW OF APPEALS
Violation of the Sexual Harassment Law. (R.A. No. 7877)	Employer-created Committee on Decorum to investigate complaint. (Sec. 4, R.A. No. 7877) Victim or complainant may institute separate and independent action for damages and other relief in Regional Trial Court (RTC) (Sec. 6, R.A. No. 7877)	Court of Appeals Supreme Court

	Criminal complaint in Regional Trial Court. (Sec. 7, R.A. No. 7877)	
Unfair labor practices (217(a)(1)	Labor Arbiter (217(a)(1)	National Labor Relations Commission (217(b)) Court of Appeals Supreme Court
Termination disputes (217(a)(2))	Labor Arbiter (217(a)(2)	National Labor Relations Commission (217(b)) Court of Appeals Supreme Court
Wages, rates of pay, hours of work and other terms and conditions of employment. Complaint accompanied with claim of reinstatement (217(a)(3))	Labor Arbiter (217(a)(3)	National Labor Relations Commission (217 (b)) Court of Appeals Supreme Court
Claims for actual, moral, exemplary and other forms of damages arising from employer-employee relations (217(a)(4)	Labor Arbiter (217(a)(4)	National Labor Relations Commission (217(b)) Court of Appeals Supreme Court

NATURE OF DISPUTE	WHERE COMPLAINT FILED - INITIAL ADJUDICATION	FLOW OF APPEALS
Cases arising from violation of prohibited activities in connection with strike or lockout and legality of strike and lockout (217(a)(5) and 264)	Labor Arbiter (217(a)(5))	National Labor Relations Commission (217(b)) Court of Appeals Supreme Court
Claims arising from employer-employee relations where amount of each claim exceeds P5,000.00, whether accompanied or not with a claim for reinstatement (217(a)(6)	Labor Arbiter (217(a)(6))	National Labor Relations Commission (217(b)) Court of Appeals Supreme Court
Claims arising out of an employer-employee relationship or any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary, and other forms of damages. (Sec. 10, R.A. No. 8042, Migrant Workers and Overseas Filipinos Act of 1995)	Labor Arbiter (217(b))	National Labor Relations Commission (217(b)) Court of Appeals Supreme Court
Intra-union and inter-union	Med-Arbiter of Bureau of Labor	Secretary of Labor Court of Appeals Supreme Court

conflicts, and all disputes, grievances or problems arising from or affecting labor-management relations except implementation or interpretation of collective bargaining agreements (226)	Relations in Regional Offices of DOLE (226)	and Employment

NATURE OF DISPUTE	WHERE COMPLAINT FILED - INITIAL ADJUDICATION	FLOW OF APPEALS
Petition for Certification Elections (232 and 259)	Med-Arbiter of Bureau of Labor Relations in Regional Offices of DOLE (232)	DOLE Secretary Court of Appeals Supreme Court (259)
1. Unresolved grievances arising from interpretation or implementation of collective bargaining agreement 2. Those arising from the interpretation or enforcement of company personnel policies	Original and exclusive jurisdiction of Voluntary Arbitrator or Panel of Voluntary Arbitrators (261)	Court of Appeals Supreme Court

3. Violations of collective bargaining agreement which are not flagrant 4. Malicious refusal to comply with the economic provisions of collective bargaining agreement. (261)		
All other labor disputes including unfair labor practices and bargaining deadlocks.	Voluntary Arbitrator or Panel of Voluntary Arbitrators. By agreement of the parties (262)	Court of Appeals Supreme Court
Disputes in industries indispensable to national interest. (263(g))	Compulsory Arbitration by: President of the Philippines or Secretary of Labor and Employment or National Relations Commission if certified by Secretary of Labor and Employment for compulsory arbitration (263(g))	Court of Appeals Supreme Court
Disputes where notice of intent to declare strike or lockout is filed	No adjudicatory powers. National Conciliation and Mediation Board (NCMB) will conciliate and mediate the dispute or recommend voluntary arbitration. (Sec. 22, EO No. 251, July 25, 1987)	

2. Voluntarism – Collective Bargaining, and Voluntary Arbitration as Alternative Methods of Dispute Settlement

2.1 Historical Background of Voluntary Modes of Dispute Settlement

Collective Bargaining and Voluntary Arbitration, aided by mediation and conciliation as alternative modes of dispute settlement began in the early 1950's. Prior to this, when Commonwealth Act No. 103 (earlier referred to as compulsory arbitration period) was the governing law, these methods were rarely used. To implement, and to encourage the practice of collective bargaining as an alternative methods of dispute settlement, the State enacted in 1953, Republic Act No. 875 - AN ACT TO PROVIDE INDUSTRIAL PEACE AND FOR OTHER PURPOSES. The Act declared:

> Sec. 1. - *Declaration of Policy* - It is the policy of this Act:
> x x x
> (c) To advance the settlement of issues between employers and employees through *collective bargaining* by making available full and adequate governmental facilities for conciliation and mediation to aid and encourage employers and representatives of their employees in reaching and maintaining agreements concerning terms and conditions of employment and in making all reasonable efforts to settle their differences by mutual agreement. (Emphasis supplied)

The same Act also provided:

> Sec. 16. *Administration of Agreement and Handling of Grievances.* The parties to collective bargaining shall endeavor to include in their agreement, provisions to insure mutual observance of the Agreement and to establish machinery for the adjustment of grievances, including any question that may arise from the application or interpretation of the agreement or from day-to-day relationships in the establishment.

2.2 Collective Bargaining as a Voluntary Mode of Dispute Settlement

The policy of *voluntarism* best illustrated in the process of Collective Bargaining as the method for setting wages, hours of work, and other terms and conditions of employment was specifically advocated by the Act. These are the subject matter that forms the core of labor and employer relationship.

The Constitution guarantees the right of all workers to collective bargaining and negotiations, and categorically and specifically states preference for a voluntary mode of settling issues in the employment relationship. (Article XIII, Section 3)

The constitutional policy of Collective Bargaining as a mode of setting conditions of employment is implemented systematically by the Labor Code (P.D. 442, as amended)

A. Policy Statement

The Labor Code, in its policy statement, clearly and unequivocally states that collective bargaining and negotiation is the preferred method of setting wages, hours of work, and other terms and conditions of employment.

> Article 211. *Declaration of Policy* - It is the policy of the State:
> (A) To promote and emphasize the primacy of free collective bargaining and negotiations . . .
> x x x
>
> (B) To encourage a truly democratic method of regulating the relations between the employers and employees by means of agreements freely entered into through collective bargaining, no court or administrative agency or official shall have the power to set or fix wages, rates of pay, hours of work or terms and conditions of employment, except as otherwise provided in this Code.

The exceptions to this policy, provided in the Labor Code are: (a) Article 263 (g) on labor disputes causing or likely to cause a strike or lockout in an industry indispensable to the national interest when certified for compulsory arbitration; (b) Article 214 regarding Wage distortion disputes resulting from an implementation of a Wage Order in establishments where there is no Collective Bargaining Agreement or duly recognized labor union. A wage distortion is defined as a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates of employee groups within an establishment so as to effectively obliterate the distinctions embodied in such wage structure, based on skills, length of service, and other logical basis of differentiation; and (c) Articles 99, 121(d), 122(b), on minimum wage based on a geographic or industry classification.

B. Procedural Rules

To assure that the process of collective bargaining will work, the Labor Code further: (a) provides for bargaining procedures; (b) defines the meaning of the "duty to bargain in good faith"; and (c) provides enforcement procedures and sanctions in the event of non-compliance with procedures and the duty to bargain collectively.

The Labor Code encourages labor and management to provide their own expeditious procedure for collective bargaining (Article 251), but, in its absence, a procedure specified by law.

The pertinent provisions of the Labor Code read:

> Article 250. *Procedure in Collective Bargaining - The* following procedures shall be observed in collective bargaining:
> (a) When a party desires to negotiate an agreement, it shall serve a written notice upon the other party with a statement of its proposals. The other party shall make a reply thereto not later than ten (10) calendar days from receipt of such notice;
> (b) Should differences arise on the basis of such notice and reply, either party may request for a conference which shall begin not later than ten (10) calendar days from the date of request;
> (c) If the dispute is not settled, the Board shall intervene upon request of either or both parties or at its own initiative and immediately call the parties to conciliation meetings. The Board shall have the power to issue *subpoenas* requiring the attendance of the parties to such meetings. It shall be the duty of the parties to participate fully and promptly in the conciliation meetings the Board may call;
> (d) During the conciliation proceedings in the Board, the parties are prohibited from doing any act which may disrupt or impede the early settlement of the disputes; and
> (e) The Board shall exert all efforts to settle disputes amicably and encourage the parties to submit their case to a voluntary arbitration.

All matters discussed or disclosed in conciliation meetings are considered privileged communication. The pertinent provision of the Labor Code reads:

> Article 233. *Privileged Communication* – Information and statements made at conciliation proceedings shall be treated as privileged communication and shall not be used as evidence in the Commission. Conciliators and similar officials shall not testify in any court or body regarding any matters taken up at conciliation proceedings conducted by them.

C. Duty to Bargain in Good Faith

The Labor Code defines the mutual duty to bargain in good faith by:

(a) specifying the standard of conduct or behavior of the parties during the negotiation process;

(b) enumerating the negotiable or bargain able issues; and

(c) a prohibition to terminate a collective bargaining agreement during its lifetime, and providing for its continued enforceability even after its expiry date, in the absence of a new agreement.

The Labor Code provides:

> Article 252. *Meaning of Duty to Bargain Collectively - The* duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work, and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreement if requested by either party but such duty does not compel any party to agree to a proposal or make any concession.

It must be emphasized that the spirit of voluntarism in collective bargaining is quite evident, in that neither party is obliged to agree to a proposal or grant a concession; albeit, there is a duty on either or both of the parties to fully explain the justification of their respective bargaining positions on a proposal or counter-proposal.

Article 253 of the Labor Code further defines the meaning of the duty to bargain in good faith. Thus –

> Article 253. *Duty to bargain collectively when there exists a collective bargaining agreement* - When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate nor modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the *status quo* and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties.

D. Sanctions

To ensure the observance of the procedures and duty to bargain collectively, civil and criminal sanctions are provided by the Labor Code (Articles 248-249, 288-289, Labor Code).

Existing Labor Organizations and Collective Bargaining Agreements

	1999	2000	Average
No. of existing unions	9850	10296	10073
Average membership of active unions	3731	3788	3760
Collective Bargaining Agreements:			
Existing CBAs	2956	2687	2282
Workers covered by existing CBAs	529	484	507
Percentage of labor unions with CBAs	30%	26%	28%

Source: Table 46. Current Labor Statistics, Second Quarter 2001 Bureau of Labor and Employment, Statistics, Department of Labor and Employment.

The above data shows that only thirty percent (30%) of the number of unions had collective bargaining agreements. This is relatively low considering that there were, on the average, ten thousand unions existing during the years 1999 and 2000. In like manner, only a small fraction of the workforce was covered by Collective Bargaining Agreement.

E. Compulsory Arbitration: Effort to exert Voluntarism

The policy of voluntary settlement of labor disputes is manifest even in those instances where either or both of the parties have invoked the administrative machinery of government exercising quasi-judicial functions to settle their labor disputes. An effort must still be made by the adjudicating agency to amicably settle the dispute before formally hearing the case. The Labor Code, in Article 221, provides:

> Article 221. Technical rules not binding…
>
> x x x
>
> Any provision of law to the contrary notwithstanding, the Labor Arbiter shall exert all efforts towards the amicable settlement of a labor dispute within his jurisdiction on or before the first hearing. The same rule shall apply to the Commission in the exercise of its original jurisdiction.

The National Labor Relations Commission reported the implementation of the policy of exerting an amicable settlement before actually hearing the case:

> With due emphasis given to conciliation and mediation as a result of the program thrust spearheaded by the new chairman, Ambassador Roy V. Señeres, the number of cases disposed through amicable settlement reached 10,114 in year 2000 which is greater by 994 cases settled in 1999 or an increase of 10.9 percent. For the first six months of this year, the number of cases amicably settled, reached 5,565, which is an increase by 659 cases (or 13.4 percent higher) than the same period last year of 4,906. This accounts for a 42.1 percent share of the total cases disposed of for the first half of the year 2001 (National Labor Relations Commission, Budget Presentation FY 2002).

The same policy of voluntarism also applies in compulsory arbitration of labor disputes in industries indispensable to the national interest. The Labor Code reads:

> Article 263. Strikes, Picketing, and Lockouts.
>
> x x x
>
> (h) Before or at any stage of the compulsory arbitration process, the parties may opt to submit their dispute to voluntary arbitration.

2.3 Voluntary Arbitration as Mode of Dispute Settlement

The Labor Code was amended in 1989 by Republic Act No. 6715, through the addition of a new title, specifically, *Title VII - A – Grievance Machinery and Voluntary Arbitration.* The amendment was designed to emphasize and promote voluntary arbitration as a mode of settlement and as an alternative to the use of economic weapons in labor disputes. The salient features of the amendment are: (a) requiring all collective bargaining agreements to provide for a grievance procedure to resolve disputes arising from the interpretation or implementation of the agreement, with voluntary arbitration as the last step of the Grievance Procedure; (b) a procedure for the designation or selection of a voluntary arbitrator or panel of arbitrators; (c) original and exclusive jurisdiction, and jurisdiction that may be voluntarily conferred upon by the parties, on of a voluntary arbitrator or panel of voluntary arbitrators; (d) procedures for voluntary arbitration; and (e) costs of voluntary arbitration.

A. Jurisdiction of Voluntary Arbitrator

a. Original and Exclusive

The original and exclusive jurisdiction conferred by law, and that which may be conferred voluntarily by the disputants on an arbitrator or panel of arbitrators, are provided for in the Labor Code as follows:

> Article 261. *Jurisdiction of Voluntary Arbitrator 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 arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. Accordingly, violations 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 violations 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 Grievance Machinery or Voluntary Arbitration provided in the Collective Bargaining Agreement.

b. By Agreement of Labor and Management.

Article 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.

2.4 Minimum Wage Fixing

Arbitrators also have jurisdiction to adjudicate wage distortion disputes in organized establishments.

> Article 124. Standards/Criteria for Minimum Wage Fixing -
> x x x

> Where the application of any prescribed wage increase by virtue of a law or Wage Order issued by any Regional Board results in distortions of the wage structure within an establishment, the employer and the union shall negotiate to correct the distortions. Any dispute arising from wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement and, if it remains unresolved, through voluntary arbitration. xxx
>
> x x x

A. Qualifications of Voluntary Arbitrator

The qualifications of a Voluntary Arbitrator are as follows:

> Accreditation of an individual as voluntary arbitrator shall be subject to the condition that he/she meets all the qualifications prescribed by the National Conciliation and Mediation Board for accreditation. If found qualified, accreditation which is renewable every five (5) years, shall be granted.

Minimum Criteria

To qualify as an Accredited Voluntary Arbitrator, a person must posses the following minimum criteria:

(a) He/she must be a Filipino citizen residing in the Philippines

(b) He/she must be a holder of at least a Bachelor's Degree preferably relevant to Labor and Social Relations, Economics, and related fields of study

(c) He/she must have at least five (5) years of experience in the field of Labor Management relations

(d) He/she has no pending criminal case involving moral turpitude.

(*Revised Guidelines in the Accreditation and De-listing of Voluntary Arbitrators*, Department of Labor and Employment, November 15, 1999)

B. Voluntary Arbitration Subsidy

As an additional incentive for the encouragement of voluntary arbitration as a mode of dispute settlement, the State subsidizes the cost of voluntary arbitration.

> 5. x x x any party who has no capacity to pay arbitrator's fee and upon approval of the application for subsidy, shall be entitled to a maximum subsidy of fifteen thousand pesos (P15,000). Such subsidy shall be paid directly to the voluntary arbitrator upon submission of

the documentary requirements by the parties. (Resolution No. 1, series of 1999. Amending and consolidating the Guidelines on the Fees and in the Processing and Payment of Subsidy Entitlement for Voluntary Arbitration Cases)

The following is a summary of statistical data for the period January – September 2001, as reported in the *Voluntary Arbitration Situationer*, published by the National Conciliation and Mediation Board, Department of Labor and Employment. The report shows the extent of resort to *voluntary arbitration* as an alternative mode of dispute settlement.

1.	*Number of cases submitted*		
	For voluntary arbitration	160	
	Cases pending at start of year 2001	127	
	Number of cases handled as of September 2001	287	
2.	*Breakdown of cases submitted for voluntary arbitration* January – September 2001		
	Facilitated through National Conciliation and Mediation Board	97	
	Filed directly by the Parties	41	
	Referred by National Labor Relations Board	18	
	Submitted through free legal aid and volunteer services	4	
	Total	160	
3.	*Type of issues submitted*		
	Interpretation of collective bargaining agreement	67	
	Interpretation of company personnel policy	66	
	Wage distortion	10	
	Interpretation of Wage Order	7	
	Unfair Labor Practice	2	
	Wage and salary administration	2	
	Combined Issues	6	
	Total	160	
4.	*Cases Submitted by Unions*		
	Independent Unions	105	
	Unions affiliated with federations	51	
	Unorganized sector	5	
	Total	160	
5.	*Disposition Rate January – September*	141	49%
	Decided on Merits	124	
	Settled/Amnesty	12	
	Dropped/Withdrawals	4	
		140	
	Pending Resolution =	146	51%

6. *Issues*

Interpretation of collective bargaining agreement	59
Interpretation of Company personnel policy	57
Wage distortion	9
Interpretation of Wage Order	4
Wage/salary administration	3
Bargaining deadlocks	2
Unfair labor practice	1
Combined Issues	6
Total	141

Number of workers benefited	1,866
Estimated monetary benefits	P35,329,940.17

7. Duration of disposition

Upon submission for resolution	
Cases reviewed	58
Calendar days	40
From date of submission for voluntary arbitration	
Cases reviewed	136
Calendar days	177

8. *Arbitration Subsidy*

Subsidized cases	109
Unions	39
Unions and Management	65
Management	5
Total	109

9. Free Legal Aid and Voluntary Arbitration Service for Unorganized Sector

Number of Cased filed	276
Number of Cases Pending	24
Total	300

Settlement	
With aid of National Conciliation and Mediation Board	161
Dropped/Withdrawal, referred to NLRC	107
Referred to Voluntary Arbitration	3
Total	271

Number of Workers Referred	1,173
Estimated Monetary Benefits	P2,318,082.76

Cases Appealed to Court of Appeals:

The same *Situationer* also reported data on Court or Judicial Review of Decisions and Awards of Voluntary Arbitration.

Cases Reviewed by Court of Appeals:
(January – September 2001)

Cases Pending at Start of 2001	Cases Received in 2001	Total Cases Reported (Jan–Sep)
102	15	117

Cases Resolved by Court of Appeals:
(January – September 2001)

Affirmed/Dismissed for Lack of Merit	13
Reversed and Set Aside	1
Modified	1
Total Resolved	15

Source: Voluntary Arbitration Situationer, Voluntary Arbitration Case Situationer – January to September 2001. National Conciliation and Mediation Board, Department of Labor and employment, Originally in Essay Format, Re-arranged to table format

Voluntary Arbitration Cases (1988 – June 2001)

	VA Cases Decided From 1988 – Jun 2001	Elevated to Courts	Decided By Courts	%
	2,261	368		16%
Affirmed Reversed Annulled Modified			229 30 1 10	85% 11% 0.4% 4%
Total	2,261	368	270	

Source: Voluntary Arbitration Situationer, Voluntary Arbitration Case Situationer – January to September 2001, National Conciliation and Mediation Board, Department of Labor and Employment, Originally presented in Essay Form, Re-arranged to Table Format.

The above data shows the slow but growing acceptability of Voluntary Arbitration as an alternative mode of dispute settlement.

The very high percentage of affirmed Decisions or Awards by the Courts, on appeal, and the continuing efforts of the Department of Labor and Employment to promote the process is expected to significantly boost the growth and acceptability of the voluntary arbitration process.

3. National Conciliation and Mediation Board

3.1 Nature of Office

The National Conciliation and Mediation Board, an agency attached to the Department of Labor and Employment, and administratively supervised by the Department Secretary, was created to assist parties to settle their disputes amicably, albeit, without adjudicatory powers unless voluntarily agreed upon by the parties.

The National Conciliation Mediation Board, in the exercise of its functions, also fully implements the policy of voluntarism. The pertinent provision of the Labor Code reads:

> Article 250. *Procedure in collective bargaining* –
> *The* following procedures shall be observed in collective bargaining:
> x x x
>
> (c) If the dispute is not settled, the [National Conciliation and Mediation] Board shall intervene upon request of either or both parties or on its own initiative and immediately call the parties to conciliation meetings. The Board shall have the power to issue *subpoenas* requiring the attendance of the parties to such meetings. It shall be the duty of the parties to participate fully and promptly in the conciliation meeting the Board may call;
>
> xxx
>
> (e) the Board shall exert all efforts to settle disputes amicably and encourage the parties to submit their cases to a voluntary arbitrator.

3.2 Functions of the NCMB

The functions of the Board are provided by the law creating the office (Executive Order No. 126, Reorganizing the Ministry of Labor and Employment, etc. January 30, 1987).

> Section 22. *National Conciliation and Mediation Board* - x x x
> The Board shall have the following functions:

(a) Formulate policies, programs, standards, procedures, manual of operations and guidelines pertaining to effective mediation and conciliation of labor disputes;
(b) Perform mediation and conciliation functions.

3.3 Composition and Qualifications

> Sec. 22. … there shall be as many Conciliators - Mediators as the needs of the public service require, who shall have at least three (3) years of experience in handling labor relations and who shall be appointed by the President upon recommendation of the Minister.

The qualifications of a Conciliator-Mediator are provided by the same Executive Order.

(a) Bachelor's Degree relevant to the job;
(b) Four (4) years relevant experience;
(c) Twenty four (24) hours relevant training;
(d) Civil Service eligibility for professionals or appropriate eligibility for second level position

(Source: National Conciliation and Mediation Board)

Preventive Mediation Cases and Voluntary Arbitration Cases

	1999	2000	Average
Preventive mediation cases			
Cases handled	859	827	843
Cases disposed	823	763	793
Settled	689	659	674
Jurisdiction assumed by the DOLE Secretary	2	2	2
Certified for compulsory arbitration	0	1	1
Referred to compulsory arbitration	15	16	16
Referred to voluntary arbitration	60	47	54
Materialized into notice of strike/lockout and actual strike/lockout	46	25	36
Other modes of disposition	11	13	12
Disposition Rate	96%	92%	94%
Settlement Rate	80%	80%	80%

Source: Table 50. Current Labor Statistics. Second Quarter 2001 Bureau of Labor and Employment Statistics, Department of Labor and Employment

The data shows:

1. Out of a total of over 800 cases filed for preventive mediation as well as for strike/lockout but treated as preventive mediation cases, DOLE was able to dispose of over 90% of the case load for both years. Moreover, 80% of the preventive mediation cases were settled.
2. In both years, DOLE facilitated/monitored over 300 cases of voluntary arbitration. However, there was a substantial decline in the number of cases they were able to dispose of.

Strike/Lockout Notices and Actual Strikes/Lockouts

	1999	2000	Average
Notices of strike/lockout			
Cases handled	918	808	863
Cases disposed	844	748	796
Settled	707	594	651
Jurisdiction assumed by DOLE Secretary	31	23	27
Certified for compulsory arbitration	11	29	20
Materialized into actual strikes/lockouts	46	51	49
Treated as preventive mediation case	33	35	34
Other modes of disposition	16	16	16
Disposition Rate	92%	93%	92%
Settlement Rate	77%	74%	75%
Actual strikes/lockouts			
Cases handled	59	65	62
Cases disposed	54	60	57
Settled	35	37	36
Jurisdiction assumed by DOLE Secretary	12	14	13
Certified for compulsory arbitration	7	7	7
Other modes of disposition	0	2	1
Disposition Rate	92%	92%	92%
Settlement Rate	59%	57%	58%

Source: Table 48. Current Labor Statistics, Second Quarter 2001, Bureau of Labor and Employment Statistics, Department of Labor and Employment.

The data shows:

1. There was a decrease in the number of strike/lockout notices filed by labor unions for the year 2000 when compared to the 1999 level. This could be due to (a) a decrease in the number of companies operating in the year 2000; or (b) an indication of the labor's apprehension of losing jobs in a shrinking job market.

2. Of the notices of strike/lockout filed by labor unions, DOLE was able to dispose of more than 90% of the cases. This value may be considered high and indicates that DOLE is efficient in resolving the notices of strikes/lockouts. DOLE was also able to settle about 75% of the cases and hence prevented the notices from resulting in actual strikes/lockouts.
3. The number of actual strikes/lockouts that occurred is around 60 with more than 90% disposed of by DOLE. Despite the failure of DOLE from preventing these strikes/lockouts from materializing, it was able to settle about 60% of the strikes/lockouts after it has started.

4. Courts of Law Performing Judicial Functions: Role in Labor Dispute Settlement

4.1 The Courts

The Decisions and Awards of administrative tribunals exercising quasi-judicial functions are appealed initially to the Court of Appeals and ultimately to the Supreme Court of the Philippines as the highest tribunal of the land. Both the Court of Appeals and the Supreme Court are regular and integral parts of the Philippine Judiciary as a separate and co-equal branch of government.

Under Labor Law, the agencies exercising quasi-judicial functions whose decisions and awards are appealed initially to the Court of Appeals, and finally to the Supreme Court are: (a) the Office of the President of the Philippines; (b) the Office of the Secretary of Labor and Employment; (c) National Labor Relations Commission; and (d) the Office of the Voluntary Arbitrator.

4.2 Court of Appeals

The composition of the Court of Appeals, jurisdiction, and qualifications of the Justices of the Court are provided for in Batas Pambansa Blg. 129, as amended, which reads as follows:

> Sec. 3. Organization. - There is hereby created a Court of Appeals, which shall consist of a Presiding Justice, and sixty-eight (68) Associate Justices who shall be appointed by the President of the Philippines.

> Section 7. Qualifications. - The Presiding Appellate Justice and the Associate Appellate Justices shall have the same qualifications as those provided in the Constitution for Justice of the Supreme Court.
>
> Section 9. - The Intermediate Appellate Court shall exercise…
>
> xxx Exclusive appellate jurisdiction over all judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the provisions of this Act, and subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1998.

A 1995 Decision of the Supreme Court, clarified the rule of appeal of a Decision and Award of a Voluntary Arbitrator.

> …it follows that the voluntary arbitrator, whether acting solely or in a panel, enjoys in law the *status of a quasi-judicial* agency . . .
>
> Section 9 of B.P. Blg. 129, as amended by Republic Act No. 7902, provides that the Court of Appeals shall exercise:
> x x x
>
> (3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of … quasi-judicial agencies and *instrumentalities.*…
>
> Assuming *arguendo* that the voluntary arbitrator or panel of voluntary arbitrators may not strictly be considered as a quasi-judicial agency, board or commission, still both he and the panel are comprehended within the concept of a quasi-judicial instrumentality. (Luzon Development Bank v. Association of Luzon Development Bank Employees, 249 SCRA 162)

The Rules of Court of the Philippines, on the scope of the CA to decide on such appeals, reads:

> Rule 43
>
> Appeals from the Quasi-Judicial Agencies to the Court of Appeals
>
> Section 1. *Scope* – This Rule shall apply to appeals from judgments or final orders of ... voluntary arbitrators authorized by law.

4.3 Supreme Court of the Philippines

The Supreme Court of the Philippines is the highest tribunal of land. The (a) composition of the Supreme Court, (b) qualifications of the Justices; and (c) its appellate function are all provided for in the Constitution of the Philippines. The pertinent provisions of Article VIII of the Constitution are as follows:

> Sec. 4 (1) The Supreme Court shall be composed of a Chief Justice and Fourteen Associate Justices. It may sit *en banc* or in its discretion, in divisions of three, five or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.
>
> Sec. 7 (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more, a judge of a lower court or engaged in the practice of law in the Philippines.

A 1998 decision of the Supreme Court of the Philippines clarified the mode of appeal and review of a decision of the National Labor Relations Commission initially, to the Court of Appeals, and finally the Supreme Court. The Court ruled as follows:

> The Court is, therefore, of the considered opinion that ever since appeals from the NLRC to the Supreme Court were eliminated, the Legislative intendment was that the special civil action of *certiorari* was and still is the proper vehicle for judicial review of decisions of the NLRC…appeals by certiorari and the original action for certiorari are both modes of judicial review addressed to the appellate courts. The important distinction between them, however, … is that the special civil action of certiorari is within the concurrent original jurisdiction of the Court and the Court of Appeals…
> xxx
>
> Therefore, all references in the amended Section 9 of B.P. No. 129 to supposed appeals from the NLRC to the Supreme Court are interpreted and hereby declared to mean and refer to petitions for certiorari under Rule 65. Consequently, all such petitions should henceforth be initially filed in the Court of Appeals in strict observance of the doctrine of the hierarchy of courts as the appropriate forum for that relief derived (St. Martin Funeral Home v. NLRC, 295 SCRA 494.).

Rule 65 of the Rules of Court of the Philippines, referred to in the decision reads:

> Section I. *Petition For Certiorari* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

5. Questions Raised in Project

The Joint Research Project Plan submitted to the country participant of the Project, asked the following questions:

What kinds of routes are available for dispute resolutions?

Choice of routes for dispute resolutions (dispute resolution patterns):

(a) What kind of patterns do people choose in practice?

(b) Any trend in people's choices?

(c) Factors that influence choices.

(d) What is the role of lawyers? How are they involved in the process?

Parties to a dispute – either labor or management – may choose one of the following routes to resolve a labor dispute:

- Compulsory Arbitration Process – compulsory arbitration as a method of labor dispute settlement is widely used and accepted. The following factors contribute to the choice:
  - The historical reliance – since 1986 – by workers on the State, through a government arbitral agency on the adjudication of their disputes.
  - A lack of awareness, experience, and reluctance to experiment with alternative methods, such as collective bargaining and voluntary arbitration.
  - The low level of unionizing among workers.

The statistical data earlier presented clearly shows that most labor disputes are settled through the process of compulsory arbitration.

The low level of unionizing is the major factor why collective bargaining as a mode of dispute settlement is not availed of. Coupled with the economic downturn since 1999, workers are not keen on unionizing for fear of economic consequences. The

ordinary worker lacks adequate awareness of how his terms and conditions of employment are determined, much less resolved, in cases of dispute. The omnipresence of labor law and government agencies are all that he is keenly aware of. The same can also be said of voluntary arbitration. It is on the adjudicative agencies of government that the worker relies on, for the settlement of disputes, even if at times, with misgivings.

What is the role of the legal profession in labor-management relations in the Philippines? Philippine society has placed lawyers in the forefront of many activities and they participate in government and the corporate sector in many capacities including non-judicial assignments. In the collective bargaining process, lawyers are either (a) contract negotiators; (b) contract drafters; and (c) personnel managers of establishments. Many lawyers are involved in any or all of these activities.

Lawyers also actively participate in the area of adjudication of labor disputes. The (a) adversarial nature of dispute resolution; (b) composition and officialdom of the adjudicatory agencies all are staffed by lawyers; and (c) belief by society in the role of lawyers as advocates of a cause of action by either the aggrieved and defending party, all contribute to the pervasive role of lawyers in labor-management relations.

6. Summary

Historical events (political, social and economic), experience, the impact of Conventions and Recommendations of the International Labor Organization, and methods of dispute settlement found in other industrialized countries, specifically, USA, have shaped the development and formulation of the Philippine system of labor dispute settlement, since 1935. It is safe to predict that in the foreseeable future the dual system of Compulsory Arbitration and Collective Bargaining and Voluntary Arbitration and the use of mediation and conciliation will continue to be the methods of dispute settlement. Compulsory Arbitration will continue to play a significant role. The experience over a long period of reliance on Government as the final arbiter of labor dispute is deeply rooted, and the faith of the parties in Government, although not without occasional misgiving, will assure the continued use of compulsory arbitration as a mode of dispute settlement. There is, however, optimism that, in the not too distant future, collective bargaining and voluntary arbitration will become more acceptable. This belief is based on the systematic and continuing program of the Department of Labor and Employment to emphasize and promote the method of collective bargaining and voluntary arbitration

as alternatives to compulsory arbitration, the growing maturity and confidence of the parties in labor-management relations towards each other, and the gradual acceptance of the process of collective bargaining and voluntary arbitration. The high rate of judicial affirmance of the awards or decisions in voluntary arbitration cases auger well for voluntary arbitration.

In conclusion, the two contrasting methods of labor dispute resolution will continue and it would be presumptuous to say that one or the other will vanish. Hopefully, the parties should learn to rely on their own labor-management mechanisms, but this ideal situation today is but a hope.