# PLUGGING A HOLE IN THE SHIP: REVIEWING THE CONSTITUTIONAL VALIDITY OF THE FINAL AND EXECUTORY NATURE OF NLRC DECISIONS*

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## I. INTRODUCTION

In a public interview conducted by the Judicial and Bar Council of candidates for the position of Associate Justice of the Supreme Court,[1] Chief Justice Diosdado M. Peralta raised a concern shared by members of the shipping industry that could have a profound effect on the Philippine economy.

The Chief Justice pointed out that decisions of the National Labor Relations Commission (NLRC) awarding disability benefits and other monetary claims in favor of employees, seafarers in particular, become final and executory ten (10) calendar days from the receipt of the decision by the parties.[2] Even if the decisions of the NLRC are deemed final and executory, the Supreme Court, in *St. Martin Funeral Homes v. NLRC and Bienvenido Aricayos* (*St. Martin*),[3] held that judicial review of NLRC decisions may still be

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[1] The Public Interview was conducted on Dec. 9, 2019 at the Division Hearing Room of the Supreme Court for the position of Supreme Court Associate Justice *vice* Associate Justice Diosdado M. Peralta, who was appointed Chief Justice of the Supreme Court of the Philippines on October 23, 2019. The interviewees were Court of Appeals Associate Justices Ramon A. Cruz and Eduardo B. Peralta, Jr.

[2] LAB. CODE, art. 229 (formerly art. 223).

[3] [Hereinafter "St. Martin"], G.R. No. 130866, 295 SCRA 494, 509, Sept. 16, 1998.

sought through a petition for certiorari under Rule 65 of the Rules of Court filed with the Court of Appeals. Although subject to judicial review, the final and executory nature of the decisions of the NLRC is not altered.[4]

Thus, when the NLRC renders a decision holding a seafarer entitled to disability benefits or other monetary claims from their employer, the same becomes final and executory unless the Court of Appeals or the Supreme Court enjoins the execution of the NLRC decision. Logically, the seafarer who was awarded with monetary benefits would immediately enforce the NLRC decision and seek compensation from their employer. Consequently, the bank accounts and the properties of the employer will be garnished to satisfy the NLRC decision. This often results in losses and disruption of the employer's business.

However, in numerous cases,[5] the Court of Appeals and/or the Supreme Court would reverse the findings of the NLRC and rule that: (1) the seafarers are entitled to a lesser monetary award; or (2) the seafarers are not entitled to any monetary award at all.

When the Court of Appeals and/or the Supreme Court reverses the decision of the NLRC awarding monetary benefits to the seafarers, the remedy of restitution is available to the employers.[6] However, in reality, the remedy of restitution is ineffective, if not altogether futile, because in most instances, the employee can no longer return the monetary award.

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[4] NLRC RULES, Rule 11, § 14. *Effect of Petition for Certiorari on Execution.* – A petition for certiorari with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a restraining order is issued by said courts.

[5] Dalusong v. Eagle Clarc Shipping Philippines, Inc., G.R. No. 204233, 734 SCRA 315, Sept. 3, 2014; Ibaretta v. Philippine Transmarine Carriers, Inc., G.R. No. 209796, June 25, 2014 (3rd Division Resolution); Philippine Transmarine Carriers Inc., v. Legaspi, G.R. No. 202791, 698 SCRA 280, June 10, 2013; Wallem Mar. Serv., Inc. v. Quillao, G.R. No. 202885, 781 SCRA 477, Jan. 20, 2016; Scanmar Mar. Serv., Inc. v. De Leon, G.R. No. 199977, 815 SCRA 547, Jan. 25, 2017.

[6] NLRC RULES, Rule 11, § 18. *Restitution.* – Where the executed judgment is totally or partially reversed or annulled by the Court of Appeals or the Supreme Court with finality and restitution is ordered, the Labor Arbiter shall, on motion, issue such order of restitution of the executed award, except reinstatement wages paid pending appeal.

In *Philippine Transmarine Carriers, Inc. v. Legaspi*,[7] the Supreme Court acknowledged this problematic reality:

> As the agreement was voluntarily entered into and represented a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. Respondent agreed to the stipulation that he would return the amount paid to him in the event that the petition for certiorari would be granted. Since the petition was indeed granted by the CA, albeit partially, respondent must comply with the condition to return the excess amount.
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> The Court finds that the Receipt of Judgment Award with Undertaking was a fair and binding agreement. It was executed by the parties subject to outcome of the petition. To allow now respondent to retain the excess money judgment would amount to his unjust enrichment to the prejudice of the petitioner.
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> Unjust enrichment is a term used to depict result or effect of failure to make remuneration of or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them. To be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request. Unjust enrichment is not itself a theory of reconveyance. Rather, it is a prerequisite for the enforcement of the doctrine of restitution. There is unjust enrichment when:
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> 1. A person is unjustly benefited; and
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> 2. Such benefit is derived at the expense or with damages to another.
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> In the case at bench, petitioner paid respondent US$81,320.00 in the pre-execution conference plus attorney's fees of US$8,132.00 pursuant to the writ of execution. The June 29, 2011 CA Decision, however, modified the final resolution of the NLRC and awarded only US$60,000.00 to respondent. If allowed to return the excess, the respondent would have been unjustly benefited to the prejudice and expense of petitioner.

[7] G.R. No. 202791, 698 SCRA 280, June 10, 2013.

> Petitioner's claim of excess payment is further buttressed by, and in line with, Section 14, Rule XI of the 2011 NLRC Rules of Procedure which provides:
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> > EFFECT OF REVERSAL OF EXECUTED JUDGMENT. – Where the executed judgment is totally or partially reversed by the Court of Appeals or the Supreme Court, the Labor Arbiter shall, on motion, issue such orders of restitution of the executed award, except wages paid during reinstatement pending appeal.
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> Although the Court has, more often than not, been inclined towards the plight of the workers and has upheld their cause in their conflicts with the employers, such inclination has not blinded it to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.[8]

According to statistics[9] published by the International Group of P&I Clubs, an international association composed of underwriting protection and indemnity entities which provide liability coverage for approximately 90% of the world's ocean-going vessels, as of September 2017, 354 cases involving seafarer disability claims which were initially decided in favor of the seafarer had been totally reversed, or modified by the Court of Appeals and/or the Supreme Court. Of these 354 cases, 232 cases had already attained finality, resulting in a total amount of USD 16,260,642.05 for restitution to the employers.[10] Unfortunately, only 0.43% of the said amount, or USD 69,673.32, had been successfully recovered from the seafarers.[11]

Meanwhile, as of September 2017, the 122 NLRC decisions reversed or modified by the Court of Appeals and/or the Supreme Court have yet to attain finality.[12] These cases involve an additional amount of USD 8,950,226.42 for restitution to the employers.[13]

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[8] *Id.* at 291-293. (Emphasis omitted, citations omitted.)

[9] International Group of P&I Clubs, Recognising Escrow as A Mode of Executing the Judgment Award of the NLRC (Oct. 3, 2013), *available at* https://www.ukpandi.com/fileadmin/uploads/uk-pi/Documents/Legal_sources/Philippine_Labor_Laws/IG_PISC-PWG_En_Banc_Position_Paper.pdf.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

This Article seeks to address this peculiar and inequitable situation by bringing to fore the perennial task of balancing the competing interests between labor and management. As this arises from the final and executory nature accorded to NLRC decisions by Article 229 of the Labor Code of the Philippines (Labor Code), this Article will argue that this treatment of NLRC decisions by the Labor Code is unconstitutional for not only does it limit the authority of the courts to review the decisions of the NLRC, it also encroaches on the exclusive power of the Supreme Court to promulgate rules concerning pleading, practice, and procedure in all courts.

## II. THE FINAL AND EXECUTORY NATURE OF NLRC DECISIONS

The Labor Code is a piece of social legislation enacted to provide protection and benefits to both employees and employers for the advancement of social justice. In the seminal case of *Calalang v. Williams*,[14] the Supreme Court characterized social justice as:

> "[N]either communism, nor despotism, nor atomism, nor anarchy," but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*.[15]

Social justice is one of the hallmarks of the 1987 Constitution. In fact, in the Declaration of Principles and State Policies embedded in the Constitution, it is expressly provided that "[t]he State shall promote a just and dynamic social order that will ensure the prosperity and independence

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[14] G.R. No. 47800, 70 Phil. 726 (1940).

[15] *Id.* at 734-735.

of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all."[16]

In order to realize this, the Constitution "affirms labor as a primary social force," and mandates the State to "protect the rights of workers and promote their welfare."[17] In furtherance of this, the Labor Code, the principal labor law of the country, specifically provides that "all doubts in its implementation and interpretation" shall be resolved in favor of labor.[18] Hence, in carrying out the provisions of the Labor Code, the "workingman's welfare should be the primordial and paramount consideration."[19]

"The constitutional mandate for the protection of labor is as explicit as it is demanding."[20] The purpose of this treatment accorded to labor is to place the workers on an equal footing with management, with all its concomitant power and influence, in advancing their interests and safeguarding their rights.[21] "Under the policy of social justice, the law bends backwards to accommodate the interests of the working class on the humane justification that those with less privileges in life should have more privileges in law."[22]

One of the provisions of the Labor Code giving life to these overarching principles is Article 229, which deems the decisions of the NLRC as final and executory after ten (10) calendar days from receipt thereof by the parties. Article 229 provides:

> Article 229. [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

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[16] CONST. art. II, § 9.

[17] Art. II, § 18. "The State affirms labor as a primary social force. It shall protect the rights of workers and promote their welfare."

[18] LAB. CODE, art. 4. "*Construction in Favor of Labor.* – All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor."

[19] Mirant (Phil.) Corp. v. Caro, G.R. No. 181490, 723 SCRA 465, 491, Apr. 23, 2014, *citing* Bunagan v. Sentinel Watchman & Protective Agency, Inc., 533 Phil. 283, 291 (2006).

[20] Dagupan Bus Co., Inc. v. Nat'l Lab. Rel. Comm'n, G.R. No. 94291, 191 SCRA 328, 332, Nov. 9, 1990.

[21] *Id.*

[22] Atong Paglaum, Inc. v. Comm'n on Elections, G.R. No. 203766, 694 SCRA 477, Apr. 2, 2013, (Sereno, *J., concurring and dissenting*), *citing* Central Bank Emp. Ass'n v. Bangko Sentral ng Pilipinas, G.R. No. 148208, 446 SCRA 299, 388, Dec. 15, 2004.

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 are raised which would cause grave or irreparable damage or injury to the appellant.

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided therein.

To discourage frivolous or dilatory appeals, the Commission or the Labor Arbiter shall impose reasonable penalty, including fines or censures, upon the erring parties.

In all cases, the appellant shall furnish a copy of the memorandum of appeal to the other party who shall file an answer not later than ten (10) calendar days from receipt thereof.

The Commission shall decide all cases within twenty (20) calendar days from receipt of the answer of the appellee. *The decision of the Commission shall be final and executory after ten (10) calendar days from receipt thereof by the parties.*

> Any law enforcement agency shall be deputized by the Secretary of Labor and Employment or the Commission in the enforcement of decisions, awards or orders.[23]

Implementing Article 229 of the Labor Code is Section 14 of Rule VII of the 2011 NLRC Rules of Procedure:

> Section 14. Finality of Decisions of the Commission and Entry of Judgment. – *(a) Finality of the Decisions, Resolution or Orders of the Commission.* – Except as provided in Section 9 of Rule X, *the decisions, resolutions or orders of the Commission shall become final and executory after ten (10) calendar days from receipt thereof by the counsel or authorized representative or the parties if not assisted by counsel or representative.*
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> (b) Entry of Judgment. – *Upon the expiration of the ten (10) calendar day period provided in paragraph (a) of this Section, the decision, resolution, or order shall be entered in a book of entries of judgment.*
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> In the absence of return cards, certifications from the post office or the courier authorized by the Commission or other proofs of service to the parties, the Executive Clerk or Deputy Executive Clerk shall consider the decision, resolution or order as final and executory after sixty (60) calendar days from date of mailing.[24]

Although decisions of the NLRC are deemed final and executory after ten (10) calendar days from receipt thereof by the parties, the Supreme Court in *St. Martin* ruled that judicial review of decisions of the NLRC may still be sought through a petition for certiorari filed under Rule 65 of the Rules of Court with the Court of Appeals.[25] Under Section 4 of Rule 65, the petitioner is given sixty (60) days from notice of the decision within which to file the petition.[26]

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[23] LAB. CODE, art. 229. (Emphasis supplied.)

[24] NLRC RULES, Rule 7, § 14. (Emphasis supplied.)

[25] *St. Martin*, 295 SCRA 494, 507-508.

[26] RULES OF COURT, Rule 65, § 4. "*When and where petition filed.* – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of such motion. [...]"

Hence, in cases where a petition for certiorari is filed with the Court of Appeals after the expiration of the ten-day period under the NLRC Rules of Procedure but within the sixty-day period under Rule 65 of the Rules of Court, the Court of Appeals is still vested with jurisdiction to grant the petition and modify, nullify, and reverse the decision of the NLRC.

## III. JUDICIAL REVIEW OF NLRC DECISIONS

Prior to the promulgation by the Supreme Court of its decision in *St. Martin*, the prevailing rule was that decisions of the NLRC shall be final and executory and shall not be appealable, the only avenue to question the decision being through the filing of a special civil action for certiorari alleging jurisdictional grounds—that is, that the NLRC issued the decision without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.[27]

Considering that the original provisions of Batas Pambansa Blg. 129 (B.P. 129)[28] specifically excluded orders issued under the Labor Code from the jurisdiction of the Court of Appeals, it could not be denied that it was only the Supreme Court which had jurisdiction over petitions for certiorari assailing the decisions of the NLRC.

Even after Republic Act (R.A.) No. 7902[29] was enacted in 1995 to expand the jurisdiction of the Court of Appeals, the Supreme Court continued to follow the long-standing doctrine that decisions of the NLRC can only be assailed through a petition for certiorari filed before it.

It was only on September 16, 1998, upon the promulgation of the decision in *St. Martin*, that the Supreme Court abandoned this rule and declared that NLRC decisions must be initially filed with the Court of Appeals. Thus, in accordance with this ruling, the decisions of the NLRC are

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[27] Zapata v. Nat'l Lab. Rel. Comm'n, G.R. No. 77827, 175 SCRA 56, July 5, 1989; Sunset View Condo. Corp. v. Nat'l Lab. Rel. Comm'n, G.R. No. 87799, 228 SCRA 466, Dec. 15, 1993; Chu v. Nat'l Lab. Rel. Comm'n, G.R. No. 106107, 232 SCRA 764, June 2, 1994; Encyclopaedia Britannica (Phil.) Inc. v. Nat'l Lab. Rel. Comm'n, G.R. No. 87098, 264 SCRA 1, Nov. 4, 1996; Building Care Corp. v. Nat'l Lab. Rel. Comm'n, G.R. No. 94237, 268 SCRA 666, Feb. 26, 1997 (1st Division); Valdez v. Nat'l Lab. Rel. Comm'n, G.R. No. 125028, 286 SCRA 87, Feb. 9, 1998.

[28] Batas Blg. 129 (1981). The Judiciary Reorganization Act of 1980.

[29] Rep. Act No. 7902 (1995). An Act Expanding the Jurisdiction of the Court of Appeals, Amending for the Purpose Section Nine of Batas Pambansa Blg. 129, As Amended, Known as the Judiciary Reorganization Act of 1980.

subject to judicial review by the Court of Appeals before it can be brought to the Supreme Court through a petition for review on certiorari under Rule 45 of the Rules of Court.

In *Cocomangas Hotel Beach Resort v. Visca*,[30] the Supreme Court elucidated the scope and extent of the power of Court of Appeals to review the decisions of the NLRC:

> The rule is settled that the original and exclusive jurisdiction of [the Court of Appeals] to review a decision of the respondent NLRC (. . .) in a petition for certiorari under Rule 65 does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for *certiorari*, which is merely confined to issues of jurisdiction or grave abuse of discretion. *It is thus incumbent upon petitioner to satisfactorily establish that respondent Commission (. . .) acted capriciously and whimsically in total disregard of evidence material or even decisive of the controversy, in order that the extraordinary writ of certiorari will lie.* By grave abuse of discretion is meant such capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. For *certiorari* to lie, there must be capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions.[31]

Thus, in reviewing the decisions of the NLRC, the Court of Appeals is empowered to grant the prerogative writ of certiorari when:

> [1] [T]he factual findings complained of are not supported by the evidence on record;
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> [2] [I]t is necessary to prevent a substantial wrong or to do substantial justice;
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> [3] [T]he findings of the NLRC contradict those of the Labor Arbiter; and
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> [4] [N]ecessary to arrive at a just decision of the case.[32]

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[30] G.R. No. 167045, 563 SCRA 705, Aug. 29, 2008.

[31] *Id.* at 714, *citing* Zarate, Jr. v. Olegario, 331 Phil. 278 (1996). (Emphasis supplied.)

[32] Paredes v. Feed the Children Phil., Inc. [hereinafter "Paredes"], G.R. No. 184397, 770 SCRA 203, 218, Sept. 9, 2015.

When the decision of the Court of Appeals is elevated to the Supreme Court for final review, the Supreme Court is "solely confronted with whether the Court of Appeals correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, and not whether the NLRC decision on the merits of the case was correct."[33]

In exercising its power of judicial review over labor cases decided by the NLRC and reviewed by the Court of Appeals, the Supreme Court is empowered to:

> (a) [Ascertain] the correctness of the decision of the Court of Appeals in finding the presence or absence of grave abuse of discretion. This is done by examining, on the basis of the parties' presentation, whether the Court of Appeals correctly determined that at the NLRC level, all the adduced pieces of evidence were considered; no evidence which should not have been considered was considered; and the evidence presented supports the NLRC's findings; and
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> (b) [Decide] other jurisdictional error that attended the Court of Appeals' interpretation or application of the law.[34]

Although subject to judicial review, the final and executory nature of the decisions of the NLRC is not altered. Section 14 of Rule XI of the NLRC Rules of Procedure states:

> Section 14. Effect of Petition for Certiorari on Execution. – A petition for certiorari with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a restraining order is issued by said courts.

Moreover, Section 7 of Rule 65 of the Rules of Court provides:

> Section 7. *Expediting proceedings; injunctive relief.* – The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the

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[33] Gabriel v. Petron Corp., G.R No. 194575, 861 SCRA 37, 46, Apr. 11, 2018, *citing* Montoya v. Transmed Manila Corp., 613 Phil. 696, 707 (2009). (Emphasis omitted.)

[34] *Id.*, *citing* Stanley Fine Furniture v. Galiano, 748 Phil. 624, 637 (2014).

> parties pending such proceedings. *The petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case.*[35]

While the Court of Appeals is empowered to issue a temporary restraining order (TRO) and/or a writ of preliminary injunction (WPI) to prevent the immediate execution of decisions of the NLRC, official figures would show that labor decisions are mostly decided by the Court of Appeals on the merits without issuing any injunctive relief.

### A. The issuance of a TRO and/or a WPI is usually not proper in enjoining the execution of NLRC decisions granting monetary awards to seafarers

In 2017, out of 2,047 cases filed with the Court of Appeals assailing the decisions of the NLRC, the Court of Appeals issued only six TROs and/or WPIs enjoining the immediate execution of NLRC decisions.[36] This constitutes only 0.29%.

In 2018, out of 2,000 cases filed with the Court of Appeals assailing decisions of the NLRC, there were only two TROs and/or WPI issued by the Court of Appeals enjoining the immediate execution of NLRC decisions.[37] This constitutes only 0.1%.

Lastly, in 2019, out of 2,184 cases filed with the Court of Appeals assailing the decisions of the NLRC, there were only five TROs and/or WPIs issued by the Court of Appeals enjoining the immediate execution of NLRC decisions.[38] This constitutes only 0.23%.

Thus, from 2017 to 2019, the rate of issuance of TROs and/or WPIs of the Court of Appeals enjoining the execution of the decisions of the NLRC awarding monetary benefits to seafarers is only 0.21%. These figures show that the Court of Appeals, in almost all instances, resolves NLRC cases without issuing any injunctive relief.

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[35] RULES OF COURT, Rule 65, § 7. (Emphasis supplied.)

[36] Undated Report issued by the Office of the Clerk of Court of the Court of Appeals on Related Cases with Temporary Restraining Order[s] issued by the Court of Appeals from 2017-2019.

[37] *Id.*

[38] *Id.*

The reluctance of the Court of Appeals to issue a TRO and/or a WPI to enjoin the execution of an NLRC decision granting monetary benefits to a seafarer is explained by the extraordinary nature of a TRO and/or a WPI.

Injunction is a judicial writ, process, or proceeding whereby a party is ordered to do or refrain from doing a certain act.[39] The object of the issuance of an injunctive relief such as a TRO and/or a WPI is to preserve the *status quo ante*.[40] According to Section 5, Rule 58 of the Rules of Court, a TRO and/or a WPI may only be issued if there is a grave and irreparable injury that will be suffered by the applicant.[41] Likewise, "for the issuance of a TRO and/or a WPI to be proper, it must be shown that the invasion of the right sought to be protected is material and substantial; that the right of complainant is clear and unmistakable; and that there is an urgent and paramount necessity for the writ to prevent serious damage."[42] In other words, "[i]n the absence of a clear legal right, the issuance of a TRO and/or a WPI constitutes grave abuse of discretion."[43]

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[39] RULES OF COURT, Rule 58, § 1. "*Preliminary Injunction defined; classes.* – A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction."

[40] AMA Land, Inc. v. Wack Wack Residents' Ass'n, Inc., G.R. No. 202342, 831 SCRA 328, 347, July 19, 2017, *citing* Searth Commodities Corp. v. Ct. of Appeals, G.R. No. 64220, 207 SCRA 622, 630, Mar. 31, 1992.

[41] RULES OF COURT, Rule 58, § 5. "*Preliminary Injunction not granted without notice; exception.* – No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from the facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order."

[42] Special Audit Team v. Ct. of Appeals, G.R. No. 174788, 696 SCRA 166, 184, Apr. 11, 2013, *citing* Equitable PCI Bank, Inc. v. Fernandez, G.R. No. 163117, 608 SCRA 433, 440, Dec. 18, 2009.

[43] TML Gasket Indus., Inc. v. BPI Family Savings Bank, Inc., G.R. No. 188768, 688 SCRA 50, 60, Jan. 7, 2013.

In applying for the issuance of a TRO and/or a WPI, the applicant must establish the urgency of the issuance of the injunctive relief to prevent grave and irreparable injury.[44] Thus, "[t]he possibility of a grave and irreparable injury must be established, at least even tentatively, to justify the restraint of the act complained of" and "[t]he failure [of the applicant] to do so will warrant the denial of the application."[45]

With regard to NLRC decisions granting monetary benefits to seafarers, the Court of Appeals has refrained from issuing TROs and/or WPIs to enjoin the enforcement of these decisions as they involve matters which are plainly pecuniary, thus not "irreparable" by legal definition. Damages which are susceptible of mathematical computation are not considered "irreparable" since they could be readily compensated.[46]

In *Tiong Bi, Inc. v. Philippine Health Insurance Corporation*,[47] the Supreme Court explained the concept of irreparable damage or injury:

> *Damages are irreparable within the meaning of the rule relative to the issuance of injunction where there is no standard by which their account can be measured with reasonable accuracy.* "An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated and continuing kind which produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement."[48]

In these cases, although the enforcement of the decisions of the NLRC awarding monetary benefits to the seafarers may be economically prejudicial to the interest of the employers, the damage is purely pecuniary and can be easily subjected to mathematical computation.

Also, the figures often cited by the employers for the issuance of TROs and/or WPIs, showing the high number of employers who fail to recover awards executed in prior cases, is not proof that the same situation

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[44] Evy Constr. and Dev. Corp. v. Valiant Roll Forming Sales Corp., G.R. No. 207938, 842 SCRA 464, 468, Oct. 11, 2017.

[45] *Id.* at 483-484.

[46] Phil. Nat'l Bank v. Castalloy Tech. Corp., G.R. No 178367, 668 SCRA 415, 424, Mar. 19, 2012; Ermita v. Aldecoa-Delorino, G.R. No. 177130, 651 SCRA 128, 144-145, June 7, 2011.

[47] G.R. No. 229106, Feb. 20, 2019.

[48] *Id.*, *citing* Heirs of Yu v. Ct. of Appeals, 717 Phil. 284, 301 (2013). (Emphasis supplied.)

will prevail in the individual cases of the applicants. At best, these are mere assumptions that cannot be used as basis for the issuance of a TRO and/or a WPI.

In resolving petitions assailing the decisions of the NLRC without issuing any injunctive reliefs, the Court of Appeals is guided by the maxim that "injunction is a limitation upon the freedom of the respondent's action and should not be granted lightly or precipitately."[49] Thus, "[i]t should be granted only when the court is fully satisfied that the law permits it and the emergency demands it; no power exists whose exercise is more delicate, which requires greater caution and deliberation, or is more dangerous in a doubtful case, than the issuance of an injunction."[50]

## III. THE RULE-MAKING POWER OF THE SUPREME COURT

Until the 1987 Constitution took effect, the previous constitutions textualized a power-sharing scheme between the legislature and the Supreme Court in the enactment of judicial rules.[51] Thus, both the 1935[52] and the 1973[53] Constitutions vested the Supreme Court with the "power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law." However, these constitutions also granted the legislature the concurrent power to "repeal, alter or supplement" such rules.[54]

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[49] China Banking Corp. v. Spouses Ciriaco, G.R. No. 170038, 676 SCRA 132, 141, July 11, 2012.

[50] *Id.* at 141-142, *citing* Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc., G.R. No. 165950, 628 SCRA 79, 90, Aug. 11, 2010 *and* Pahila-Garrido v. Tortogo, G.R. No. 156358, 655 SCRA 553, 578, Aug. 17, 2011.

[51] Baguio Market Vendors Multi-Purpose Coop. v. Cabato-Cortes [hereinafter "Baguio Market Vendors"], G.R. No. 165922, 613 SCRA 733, 739, Feb. 26, 2010.

[52] CONST. (1935), art. VIII, § 13.

[53] CONST. (1973), art. X, § 5(5).

[54] *Baguio Market Vendors,* 613 SCRA 733, 739, n.15. "The 1935 Constitution provides: 'The Congress shall have the power to repeal, alter or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines.' (Section 13, Article VIII). Similarly, the 1973 Constitution provides: 'The Supreme Court shall have the following powers: [...] (5) Promulgate rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration of the bar, which, however, may be repealed, altered or supplemented by the Batasang Pambansa.' (Section 5(5), Article X)."

The power to repeal, alter, or supplement judicial rules, which was given to Congress by the 1935 and the 1973 Constitution, was taken away by the 1987 Constitution.

Section 5(5) of Article VIII of the 1987 Constitution, which enhanced the rule-making power of the Supreme Court, provides:

> Section 5. The Supreme Court shall have the following powers:
>
> * * *
>
> (5) *Promulgate rules concerning* the protection and enforcement of constitutional rights, *pleading, practice, and procedure in all courts*, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court."[55]

In *Echegaray v. Secretary of Justice*,[56] the Supreme Court noted the expansion of its rule-making powers by the 1987 Constitution:

> *The rule making power of this Court was expanded. This Court for the first time was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. The Court was also granted for the first time the power to disapprove rules of procedure of special courts and quasi-judicial bodies. But most importantly, the 1987 Constitution took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure. In fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress, more so with the Executive.* If the manifest intent of the 1987 Constitution is to strengthen the independence of the judiciary, it is inutile to urge, as public respondents do, that this Court has no jurisdiction to control the process of execution of its decisions, a power conceded to it and which it has exercised since time immemorial.[57]

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[55] CONST., art. VII, § 5(5). (Emphasis supplied.)
[56] G.R. No. 132601, 301 SCRA 96, Jan. 19, 1999.
[57] *Id.* at 112. (Emphasis supplied.)

In *Fabian v. Desierto*,[58] the Supreme Court laid down the test for determining whether a rule is procedural or substantive:

> It will be noted that no definitive line can be drawn between those rules or statutes which are procedural, hence within the scope of this Court's rule-making power, and those which are substantive. In fact, a particular rule may be procedural in one context and substantive in another. It is admitted that what is procedural and what is substantive is frequently a question of great difficulty. It is not, however, an insurmountable problem if a rational and pragmatic approach is taken within the context of our own procedural and jurisdictional system.
>
> *In determining whether a rule prescribed by the Supreme Court, for the practice and procedure of the lower courts, abridges, enlarges, or modifies any substantive right, the test is whether the rule really regulates procedure, that is, the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them. If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be classified as a substantive matter; but if it operates as a means of implementing an existing right then the rule deals merely with procedure.*[59]

It is undisputed that Article 229 of the Labor Code, which deems the decisions of the NLRC as final and executory after ten (10) calendar days from receipt thereof by the parties, is a procedural rule. The rule does not create a right but is only a means to implement an existing right. Consequently, Congress could not have provided that the decisions of the NLRC are final and executory after ten (10) calendar days from receipt of the parties without transgressing the exclusive rule-making power of the Supreme Court.

As an administrative agency, the NLRC is vested with quasi-judicial power or administrative adjudicatory power "to hear and determine questions of fact to which legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law."[60]

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[58] G.R. No. 129742, 295 SCRA 470, Sept. 16, 1998.

[59] *Id.* at 491-492. (Emphasis supplied, citations omitted.)

[60] Chairman and Exec. Dir., Palawan Council for Sustainable Dev. v. Lim, G.R. No. 183173, 801 SCRA 304, 312, Aug. 24, 2016.

In *Biraogo v. The Philippine Truth Commission of 2010*,[61] the Supreme Court defined the scope of quasi-judicial power as:

> *[T]he power of the administrative agency to adjudicate the rights of persons before it. It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it.* In carrying out their quasi-judicial functions, the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise discretion in a judicial nature.[62]

Although it is conceded that the NLRC, a body mandated to adjudicate labor and management disputes, is a quasi-judicial body and not a court, still, Congress cannot enact a law making the NLRC's decisions final and executory after ten (10) calendar days from receipt thereof by the parties. To do so would be to bind and unduly restrict the authority of the Court of Appeals and the Supreme Court in performing its duty to review the decisions of the NLRC. Indeed, the determination of when decisions are to be considered final and executory is essentially judicial.

An opposing view necessarily results in the current absurdity where a decision which is already "final and executory" is still capable of being reviewed by the Court of Appeals and the Supreme Court. This is contrary to the doctrine that decisions which have already become final and executory are "immutable and unalterable, and can no longer be modified in any respect even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or the highest court of the land."[63]

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[61] [Hereinafter "Biraogo"], G.R. No. 192935, 637 SCRA 78, Dec. 7, 2010.

[62] *Id.* at 194-195, *citing* Dole Phil., Inc. v. Esteva, G.R. No. 161115, 509 SCRA 332, 369-370, Nov. 30, 2006. (Emphasis supplied.)

[63] Barrio Fiesta Rest. v. Beronia, G.R. No. 206690, 796 SCRA 257, July 11, 2016, *citing* Guzman v. Guzman and Montealto, 706 Phil. 319, 327 (2013).

In *Estipona v. Lobrigo*,[64] where the Supreme Court nullified Section 23[65] of R.A. No. 9165[66] for also being contrary to its rule-making authority, the Supreme Court sternly reminded:

> The separation of powers among the three co-equal branches of our government has erected an impregnable wall that keeps power to promulgate rules of pleading, practice and procedure within the sole province of this Court. The other branches trespass upon this prerogative if they enact laws or issue orders that effectively repeal, alter or modify any of the procedural rules promulgated by this
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> Court. Viewed from this perspective, We have rejected precious attempts on the part of the Congress, in the exercise of its legislative power, to amend the Rules of Court (Rules), to wit:
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> 1. *Fabian v. Desierto* – Appeal from the decision of the Office of the Ombudsman in an administrative disciplinary case should be taken to the Court of Appeals under the provisions of Rule 43 of the Rules instead of appeal by certiorari under Rule 45 as provided in Section 27 of R.A. No. 6770.
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> 2. *Cathay Metal Corporation v. Laguna West Multi-Purpose Cooprerative, Inc.* – The Cooperative Code provision on notices cannot replace the rules on summons under Rule 14 of the Rules.
>
> 3. *RE: Petition for Recognition of the Exemption of the GSIS from Payment of Legal Fees; Baguio Market Vendors Multi-Purpose Cooperative (BAMARVEMPCO) v. Hon. Judge Cabato-Cortes; In Re: Exemption of the National Power Corporation from Payment of Filing/Docket Fees;* and *Rep. of the Phils. v. Mangotara, et al.* – Despite statutory provisions, the GSIS, BARMVEMPCO, and NPC are not exempt from the payment of legal fees imposed by Rule 141 of the Rules.
>
> 4. *Carpio-Morales v. Court of Appeals (Sixth Division)* – The first paragraph of Section 14 of R.A. No. 6770, which prohibits courts except the Supreme Court from issuing temporary restraining order and/or writ of preliminary injunction to enjoin an investigation conducted by the Ombudsman, is unconstitutional as it contravenes Rule 58 of the Rules.

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[64] [Hereinafter "Estipona"], G.R. No. 226679, 837 SCRA 160, Aug. 15, 2017.

[65] Rep. Act No. 9165 (2002), § 23. *Plea-Bargaining Provision.* – Any person charged under any provision of this Act regardless of the imposable penalty shall not be allowed to avail of the provisions of plea-bargaining.

[66] Rep. Act No. 9165 (2002). Comprehensive Dangerous Drugs Act of 2002.

> Considering that the aforesaid laws effectively modified the Rules, this Court asserted its discretion to amend, repeal or even establish new rules of procedure, to the exclusion of the legislative and executive branches of government. To reiterate, the Court's authority to promulgate rules on pleading, practice, and procedure is exclusive and one of the safeguards of Our institutional independence. [67]

To reiterate, the power to promulgate rules concerning pleading, practice, and procedure in all courts is the sole and exclusive power of the Supreme Court. To allow Congress to consider the decisions of the NLRC as final and executory is to encroach upon this exclusive power.

## IV. CONCLUSION

In a free society, the interests of the management and labor inevitably clash.[68]

This paper acknowledges that the protection and benefit enjoyed by a seafarer derived from the final and executory nature of NLRC decisions is a tangible example of the State's concern and solicitude for labor. There is no doubt that this benefit accorded to them is well-intentioned.

Indeed, jurisprudence and records show that seafarers who sue their employers for monetary claims have most likely been dismissed from employment. For these seafarers, the speedy disposition of their cases and more importantly, the immediate execution of monetary awards in their favor, are urgently necessary. Any delay in the execution of an award granted to a seafarer is a serious disadvantage considering that as they were dismissed from employment, they would have to seek for other employment, and at the same time, they would have to continue supporting themselves and their families. To do this entails spending a considerable amount of money that they may not have.

Furthermore, any delay in the disposition of their cases in the appellate level without the seafarer receiving the monetary award granted to them by the NLRC poses a threat against them by their employers. Faced with uncertainty as to the outcome of their cases in the appellate level, the

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[67] *Estipona,* 837 SCRA 160, 179-181. (Citations omitted.)
[68] *Paredes*, 770 SCRA 203, 226.

seafarer may be constrained to accept a miserly offer for settlement unscrupulously made by their employers rather than wait for a favorable decision that may never come or may come too late.

While this paper recognizes that the final and executory nature of NLRC decisions gives flesh to the truism that the "labor force is a special class that is constitutionally protected because of the inequality between labor and capital,"[69] it cannot overlook the equally important doctrine that "the law does not authorize the oppression or self-destruction of the employer."[70] Patently, management has its own rights, which, as such, are "entitled to respect and enforcement in the interest of fair play."[71] Therefore, "the constitutional commitment to the policy of social justice cannot be understood to mean that every labor dispute shall automatically be decided in favor of labor."[72]

The bias accorded by no less than the Constitution itself to labor should not blind all to "the rule that justice is[,] in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine."[73]

By striking down Article 229 of the Labor Code and Section 14 of Rule VII of the 2011 NLRC Rules of Procedure for being unconstitutional, the Supreme Court upholds its sole authority to promulgate rules concerning pleading, practice, and procedure in all courts. At the same time, it safeguards the independence of the Judiciary from attempts to unduly restrict its authority to review decisions of quasi-judicial bodies such as the NLRC.

Although it may be conceded that the enactment of Article 229 of the Labor Code was inspired with a noble intention geared towards the betterment of laborers, it is important to note that "[n]o matter how noble and worthy of admiration the purpose of an act, [if] the means to be

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[69] *Id.*

[70] Panasonic Mfg. Phil. Corp. v. Peckson, G.R. No. 206316, Mar. 20, 2019, *citing* Imasen Phil. Mfg. Corp. v. Alcon, 746 Phil. 172, 179 (2014).

[71] Enchanted Kingdom, Inc. v. Verzo, G.R. No. 209559, 777 SCRA 422, 445, Dec. 9, 2015, *citing* Mercury Drug Corp. v. Nat'l Lab. Rel. Comm'n, G.R. No. 75662, 177 SCRA 580, 587, Sept. 15, 1989.

[72] Imasen Phil. Mfg. Corp. v. Alcon, G.R. No. 194884, 739 SCRA 186, 195, Oct. 22, 2014, *citing* Mercury Drug Corp. v. Nat'l Lab. Rel. Comm'n, G.R. No. 75662, 177 SCRA 580, 586-587, Sept. 15, 1989.

[73] Catotocan v. Lourdes School of Quezon City, Inc., G.R. No 213486, 825 SCRA 118, 132, Apr. 26, 2017, *citing* Phil. Transmarine Carriers, Inc. v. Legaspi, 710 Phil. 838, 850 (2013).

employed in accomplishing it is simply irreconcilable with constitutional parameters, then it cannot still be allowed."[74]

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[74] *Biraogo,* 637 SCRA 78, 177, *citing* ISAGANI CRUZ, PHILIPPINE POLITICAL LAW 12-13 (2002).