THE LAW ON LABOR UNIONS IN THE PHILIPPINES*

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A. INTRODUCTION

1. *Role of Trade Unions — Development Unionism*

The Labor Code of the Philippines[1] has enunciated, among others, the policy of the State — to promote free trade unionism as an agent of democracy, social justice and development; and, to rationalize and restructure the labor movement in order to eradicate inter-union and intra-union conflicts.[2]

By the foregoing policy statements, the State has not only acknowledged the role of free trade unions in our society as an agent of democracy, social justice and development but also committed itself to the promotion thereof to assure to our people the continued benefits derived therefrom. Nowhere in the past has this policy been so articulated than under the aegis of the New Society upon which the workers repose their hopes for a just, secure and rewarding future. In the words of the Honorable Secretary Blas F. Ople, "x x x the Code can be summed up in only one sentence: it represents the updating of all our labor laws to make them more responsive to the New Society priorities — development and employment as well as social justice."[3]

In the light of the foregoing, the law, Republic Act No. 875 (1953) which, until lately, governed the labor unions in our country has undergone re-examination in order that it could be re-aligned towards the goals of development, employment and social justice.

Before the onset of the New Society, the trade union movement in the Philippines had been characterized by fragmentation and disorientation. While unions under Republic Act No. 875 (1953) may have multiplied in number, several "flew by night", so to speak, depending upon whether or not certain self-interests were satisfied. In fine, the viability and stability of the unions were highly doubtful and instead of serving the

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1 Pres. Decree No. 442 (1974), as amended, hereinafter referred to as the LABOR CODE.

2 Art. 210.

3 Address before the Manila Rotary, May 2, 1974.

interests of the membership, many became more useful to unscrupulous labor leaders and management in achieving their selfish ends. Unions were pitted against each other and there were intense inter-union rivalries and intra-union conflicts. Not only this, activities of several unions were disoriented; there was no sense of direction in them and the same could hardly relate to the priorities of national economic development.

These were the conditions then obtaining which prompted the leadership of the New Society, as envisioned in the Code, to rationalize and restructure the labor movement in order to eradicate inter-union and intra-union conflicts.

To achieve these ends, the concept of "one union — one industry" has been evolved. This concept will be treated later. Furthermore, the Labor Code has provided for the necessary and adequate instrumentalities for enforcement to render speedy labor justice.

In this setting, restructuring of the trade union movement is just one of the initial steps to be undertaken in order to make it possible for trade unions to conserve their energies and resources. This being accomplished, trade unions can truly and effectively contribute towards the realization of national development goals thus paving the way for "Development Unionism" to be institutionalized in this country. No longer shall unions be confined to their sectoral needs and interests but will become active participants and agents of development. They shall henceforth, under the New Society, assume greater and broader responsibilities in the community and the country as a whole.

B. Sources of the Law

Although the Labor Code of the Philippines took effect last November 1, 1974 and the implementing Rules and Regulations thereof[4] became effective on February 3, 1975,[5] most of the existing unions today are still creations of the Industrial Peace Act,[6] otherwise known as the Magna Carta of Labor. These unions are undergoing the current transition period which is expected to culminate in the restructured trade union movement in the country as envisioned by the Labor Code.

The applicable laws, rules and regulations governing labor unions under the present labor relations system are:

(a) The (New) Constitution of the Philippines

(b) Labor Code of the Philippines

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[4] As provided by art. 5 of the Labor Code.

[5] Rep. Act No. 875 (1953).

[6] Cited in the Preface by Secretary Blas F. Ople, Rules and Regulations Implementing the Labor Code of the Philippines as published by the Department of Labor. These rules will be hereinafter referred to as the Rules and Regulations Implementing the Labor Code.

(c) Rules and Regulations Implementing the Labor Code of the Philippines

(d) Jurisprudence

1. *Constitution of the Philippines*

Among the Declaration of Principles and State Policies enunciated in our Constitution is a commitment that:

> "The State shall afford protection to labor, promote full employment, and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration."[7]

For the first time, such an express policy has now been constitutionally provided. The right of workers to self-organization and collective bargaining is no longer a mere statutory authority although it might be pointed out that the old as well as the new Constitution provides that: "The right to form associations or societies for purposes not contrary to law shall not be abridged."[8]

2. *Labor Code of the Philippines*

Presidential Decree No. 442, which was signed by President Ferdinand E. Marcos on May 1, 1974 took effect six months thereafter, *i.e.,* on November 1, 1974, and along with it, Title IV and Title V of Book V thereof, which is the current law governing labor organizations in the country.

It is now a settled question that Proclamation No. 1081 (1972) declaring martial law in our country was a valid exercise of the constitutional powers of the President;[9] it is likewise settled that the new Constitution became effective on January 17, 1973.[10]

Section 3 (2), Article XVII of the said Constitution provides:

> "All proclamations, orders, decrees, instructions and acts promulgated, issued or done by the incumbent President, shall be part of the law of the land, and shall remain after the lifting of martial law or the ratification of this Constitution, unless modified, revoked

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[7] Art. II, sec. 9.

[8] CONST. (1935), art. III, sec. 1(b); CONST. art. IV, sec. 7.

[9] In the matter of the petition for Habeas Corpuz of Aquino, Jr. v. Enrile, G.R. No. L-35546, September 17, 1974, 59 SCRA 183 (1974).

[10] Javellana v. Executive Secretary, G.R. No. L-36142; Tan v. Executive Secretary, G.R. No. L-36164; Roxas v. Melchor, G.R. No. L-36165; Monteclaro v. Executive Secretary, G.R. No. L-36236; Dilag v. Executive Secretary, G.R. No. L-36283, March 31, 1973 50 SCRA 30 (1973).

> or superseded by subsequent proclamations, orders, decrees, instructions or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly."

3. *Rules and Regulations Implementing the Labor Code*

> "Art. 5. *Rules and Regulations*. — The Department of Labor and other government agencies charged with the administration and enforcement of this Code or any of its parts shall promulgate the necessary rules and regulations. Such rules and regulations shall become effective fifteen days after acknowledgment of their adoption in newspapers of general circulation."

Pursuant to such authority, the Secretary of Labor issued the corresponding rules and regulations which took effect on February 3, 1975.[11]

The pertinent Rules governing labor unions are Rules II to VII of Book V entitled "Labor Relations".

4. *Jurisprudence*

The rulings and pronouncements of the Supreme Court of the Philippines with respect to cases and matters relating to labor relations issues form part of our labor relations jurisprudence. Likewise, under the Labor Code, since labor relations issues concerning registration and cancellation of union certificates, representation issues, restructuring of unions and rights and conditions of membership in labor organizations are now falling exclusively within the administrative and adjudicatory functions of the Director of the Bureau of Labor Relations and the Secretary of Labor, the decisions of these two officials of the Department of Labor are authoritative. In some instances, as in unfair labor practice cases, the decisions of the National Labor Relations Commission, the Secretary of Labor and the President of the Philippines are also controlling.

C. COVERAGE

1. *Employers Covered*

All commercial, industrial and agricultural enterprises, including religious, charitable, medical or educational institutions operating for profit are covered, as well as those enterprises and institutions aforenamed but not operated for profit, which, on the date of the effectivity of the Code, have existing collective bargaining agreements or duly recognized labor organizations of their employees, and any employer who voluntarily recognizes any labor organization of its employees for the purpose of collective bargaining.[12]

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[11] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule IV, sec. 1.

[12] LABOR CODE, art. 243.

2. *Employees Covered*

All persons employed in the foregoing three categories shall have the right to self-organization and to form, join or assist labor organizations for purposes of collective bargaining.[13] Such employees as long as they do not fall within the definition of "managerial employee" are considered rank and file employees for purposes of Book V of the Labor Code.[14]

3. *Employees Excluded*

3.1 — Security guards and other personnel employed for the protection and security of the person, properties and premises of the employer.[15]

3.2 — Managerial employees are not eligible to join, assist or form any labor organizations.[16] "Managerial employee" is one who is vested with powers or prerogatives:

(a) to lay down and execute management policies;

(b) to hire, transfer, suspend, lay off, recall, discharge, assign or discipline employees; and/or

(c) to effectively recommend such managerial actions.[17]

3.3 — Government employees, including employees of government-owned and/or controlled corporations.[18]

3.4 — Employees of religious, charitable, medical and educational institutions not operating for profit, provided the latter do not have existing collective agreements or recognized unions at the time of the effectivity of the Code nor have voluntarily waived their exemption.[19]

4. *Innovation Under the Labor Code*

One of the changes from the provisions of the Industrial Peace Act which is readily noticeable under the provisions of the Labor Code is the elimination of supervisors (unless they fall within the rank and file category as defined by the Code) from the scope of protected activities. The Code has evolved two general categories of employees, namely: (1) managerial employees, and (2) rank and file employees.[20] Under these groupings, the supervisory employees will have to be reclassified either as a managerial employee or a rank and file employee. This shall be undertaken between the representatives of the supervisory union (if this

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[13] LABOR CODE, art. 243.
[14] LABOR CODE, art. 211(k).
[15] LABOR CODE, art. 244.
[16] LABOR CODE, art. 254.
[17] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule I, sec. 1(m).
[18] Rule II, sec. 1, *Ibid.*
[19] *Ibid.*
[20] LABOR CODE, art. 211(k).

has been recognized) and the employer. If no agreement is reached between the parties, either or both of them may bring the issue to the nearest Regional Office for determination.[21]

The statement by the Department of Labor Staff Committee on Labor Code with regard to the elimination of supervisory unions is revealing and provides the reasons therefor. Quoted hereunder is the pertinent paragraph:

> "IV. Restructuring of the labor movement. — Supervisory unions are eliminated. There will be only two types of employees in every establishment.
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> 1. Managerial employees who are not eligible to form or join unions; and
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> 2. Rank and file employees who are eligible to form or join unions of their own choosing. Supervisory unions have been a source of instability, confusion and intrigues in many establishments."

The foregoing two general classifications of employees for purposes of implementing the provisions of Book V of the Labor Code have raised an interesting question as to whether or not confidential, technical and professional employees should be further allowed to form separate bargaining units apart from the rest of the rank and file employees for purposes of collective bargaining as practiced under the Industrial Peace Act. The Code has not clearly spelled this out but with the adoption of the concept of "one union-one industry" which, brought to the level of the enterprise, could rationally mean "one union-one enterprise", this writer is of the considered opinion that although theoretically allowable, such continued separation of identity will no longer serve any practical purpose and will at most be a time-consuming and energy-sapping activity.

D. REGISTRATION OF UNIONS

1. *Transition from Republic Act No. 875 (1953) to Presidential Decree No. 442 (1974)*

Republic Act No. 875 (1953) was repealed by Presidential Decree No. 442. Although the latter law took effect on November 1, 1974, most of the unions existing as of this writing are still creations of Republic Act No. 875 (1953). New unions, however, which filed applications for registration on or after November 1, 1974 were processed and registered by the appropriate Labor Relations Division or by the Bureau of Labor Relations. Of course, the unions registered under Republic Act No. 875 (1953) will unavoidably and gradually be purged and re-aligned by in-

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[21] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule II, sec. 11.

dustry, either on regional or national basis, in view of the restructuring provisions of the Labor Code.

2. *Requirements*

2.1 — *Local Unions*

The requirement of registration of new unions or labor organizations are provided for by Article 233 of the Labor Code which states:

> "ART. 233. *Requirements of Registration.* — Any applicant labor organization, association or group of unions or workers shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements:
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> (a) Fifty pesos (₱50.00) registration fee;
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> (b) The names of its officers, their addresses, the principal address of the labor organization, the minutes of the organizational meetings and the list of the workers who participated in such meetings;
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> (c) The names of all the members it seeks to represent. At least 50 percent of the employees in the bargaining unit shall be members of the applicant union;
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> (d) If the applicant union has been in existence for one or more years, a copy of its annual financial reports; and
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> (e) Four copies of the constitution and by-laws of the applicant union, minutes of its adoption and ratification, and the list of the members who participated in it.

The implementing rule of the foregoing provision of law is specific that: "All persons employed in commercial, industrial and agricultural enterprises, including religious, medical or educational institutions operating for profit, shall have the right to self-organization and to form, join or assist labor organization for purposes of collective bargaining.[22]

The added requirements for registration of new local unions under the Labor Code as differentiated from the Industrial Peace Act have made it more difficult, if not well-nigh impossible, for "fly-by-night" unions to be registered. This is made so by the requirement that at least fifty percent (50%) of the employees in the bargaining unit shall be members of the applicant union.

Section 4, Rule II, Book V of the Rules and Regulations has added another requirement which shall accompany the application for registration and that is "(f) a sworn statement by the applicant union to the effect that there is no recognized or certified collective bargaining agent in the bargaining unit concerned." This requirement promotes the stability of a

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[22] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule II, sec. 1.

union that is recognized as a collective bargaining agent within an enterprise and consequently reduces the possibilities of inter-union conflicts in said establishment. The criticism against prior government policy in effecting indiscriminate registration of applicant labor organizations which, in many instances, has contributed also to the continuing divisiveness and fragmentation of the labor movement is thus positively met. Furthermore, the "one union-one enterprise" concept is also fostered.

2.2 — *Requirements regarding constitution and by-laws*

The constitution and by-laws shall:

(a) Conform with Article 233 of the Code;

(b) Provide a definite procedure for settling internal disputes;

(c) Provide for an education and research fund; and

(d) Provide for a three (3) year term of office for the officers. Upon the effectivity of the Code, all incumbent officers of a legitimate labor organization shall be allowed to complete their terms of office. Thereafter, the election of union officers shall be held once every three (3) years.[23]

2.3 — *Additional Requirements for federations or national unions*

Subject to Article 237 of the Labor Code, if the applicant for registration is a federation or a national union, it shall, in addition to the aforementioned requirements submit the following:

> (a) Proof of the affiliation of at least ten (10) locals or chapters, each of which must be a duly recognized collective bargaining agent in the establishment or industry in which it operates, supporting the registrations of such applicant federations or national union; and (b) the names and addresses of the companies where the locals or chapters operate and the list of all the members in each company involved.[24]

2.4 — *Conditions for registration of federations or national unions*

No federation or national union shall be registered to engage in any organizational activity in more than one industry in any area or region, and no federation or national union shall be registered to engage in any organizational activity in more than one industry all over the country.

The federation or national union which meets the requirements and conditions herein prescribed may organize and affiliate locals and chapters without registering such locals or chapters with the Bureau.

Locals or chapters shall have the same rights and privileges as if they were registered in the Bureau, provided that such federation or national

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[23] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule II, sec. 5.

[24] LABOR CODE, art. 237.

union organizes such locals or chapters within its assigned organizational field of activity as may be prescribed by the Secretary of Labor.

The Bureau shall see to it that federations and national unions shall only organize locals and chapters within a specific industry or region.[25]

The foregoing provisions of law reinforce the restructuring objectives of the labor movement and are geared towards the "one union-one industry" concept.

Viewed under geographical considerations, industry and sub-industry unions may be allowed to operate and organize within a defined regional or national basis. Such industry or sub-industry union must perforce be a federation or national union.

3. Where Application Filed

Any labor organization may file an application for registration with the nearest Regional Office (of the Department of Labor).[26]

The registration of the industry and sub-industry unions under the restructuring processes provided for under Rule II, Book V, of the Rules and Regulations can only be undertaken by the Bureau of Labor Relations taking into consideration the role of the Bureau at various stages of the restructuring efforts.[27]

4. Action on Application

The Regional Office or the Bureau in appropriate cases shall act on all applications for registration within thirty (30) days from filing.[28]

5. Denial of Registration of Local Unions

The Regional Office may deny the application for registration on any of the following grounds:

(a) non-compliance with the requirements enumerated in Section 4 hereof;

(b) non-compliance with the requirements enumerated in Section 5 hereof, and

(c) engaging in the *"cabo"* system or other illegal practices.

The decision of the Regional Office denying the application for registration shall be in writing, stating in clear terms the reasons therefor. A copy thereof shall be furnished the applicant union.[29]

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[25] LABOR CODE, art. 237.

[26] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule II, sec. 1.

[27] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule III, sec. 8.

[28] LABOR CODE, art. 234; RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule II, sec. 4.

[29] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule II, sec. 6.

6. *Appeal*

Any applicant union may appeal to the Bureau the denial of registration by the Regional Office within ten (10) working days upon receipt of such decision on grounds of:

(a) grave abuse of discretion; and

(b) gross incompetence.

The appeal shall be filed in the Regional Office which shall cause the transmittal of the records to the Bureau within five (5) working days from receipt of the appeal.

The Bureau shall decide the appeal within twenty (20) working days from receipt of the records of the case. The decision of the Bureau shall be final and unappealable.[30]

7. *Rights of Legitimate Labor Organization*

A legitimate labor organization shall have the right:

(a) To act as the representative of its members for the purpose of collective bargaining;

(b) To be certified as the exclusive representative of all the employees in an appropriate collective bargaining unit for purposes of collective bargaining;

(c) To own property, real or personal, for the use and benefit of the labor organization and its members;

(d) To sue and be sued in its registered name; and

(e) To undertake all other activities designed to benefit the organization and its members, including cooperative, housing, welfare and other projects not contrary to law.

The income and properties of legitimate labor organizations shall be free from taxes, duties and other assessments, including gifts or donations they may receive from fraternal and similar organizations, local or foreign.[31]

A "legitimate labor organization" means any labor organization duly registered with the Department of Labor and includes any branch or local thereof.[32]

Ordinarily, a legitimate labor organization can represent only its members for purposes of collective bargaining. But this is rarely recognized by the employer in actual practice especially since in the process of determining the collective bargaining unit, the category of the employees, *i.e.*, whether they are rank and file or managerial employees, rather than membership in the union, is the controlling factor. Once the collective

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[30] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule II, sec. 7.

[31] LABOR CODE, art. 242.

[32] LABOR CODE, art. 211(f).

bargaining unit is determined, it usually comprises members and non-members of the union and it is incumbent upon the latter to prove that the majority of the employees embraced within the unit are members thereof; otherwise, the union will not have the legal standing to negotiate with the employer.

The certification of a legitimate labor organization as the exclusive representative of all the employees in an appropriate collective bargaining unit for purposes of collective bargaining becomes necessary when the employer refuses to extend voluntary recognition to the union. Such certification is issued by the med-arbiter of the appropriate Labor Relations Division where the petition for certification election was filed.[33] If the petition covers an industry or sub-group it shall be filed with the Bureau.[34]

Although under the Industrial Peace Act,[35] unions were not prohibited from engaging in socio-economic programs or activities for the benefit of the organization and its members, the Code now specifically mentions such activities to be undertaken by them. Whereas, the Industrial Peace Act emphasizes the primary role of unions to represent its members for purposes of collective bargaining and secondarily allowing unions to engage in socio-economic activities, the Code, by express provision, now vests upon unions the right to undertake all other activities designed to benefit the organization and its members and therefore gives equal emphasis to these activities as any other. In fine, the Code not only recognizes but also reinforces the role of "development unionism" in our society.

E. Cancellation of Unions

The certificate of registration of any legitimate labor organization, whether national or local, shall be cancelled by the Bureau if it has reason to believe, after due hearing, that the said labor organization no longer meets one or more of the prescribed requirements.

The Bureau upon approval of the Code shall immediately institute cancellation proceedings and take such other steps as may be necessary to restructure all existing registered labor organizations in accordance with the objective as envisioned.[36]

1. *Grounds for Cancellation of Union Registration*

The certificate of registration of any legitimate labor organization, including labor federations and national unions registered under Republic

[33] Rules and Regulations Implementing the Labor Code, Book V, Rule VI, sec. 8(e).

[34] Rules and Regulations Implementing the Labor Code, Book V, Rule V, sec. 1.

[35] Rep. Act No. 875 (1953).

[36] Labor Code, art. 238.

Act No. 875 (1953) or under the Code, may be cancelled by the Regional Office on any of the following grounds:

(a) violation of Articles 233, 237 and 239 of the Code;

(b) failure to comply with Article 236 of the Code;

(c) violation of any of the provisions of Article 241 of the Code; and

(d) any violation of the provisions of this Book.[37]

2. *Notice of Cancellation*

The Regional Office shall serve a notice of the cancellation proceedings on the labor organization concerned stating the grounds therefor, at least three (3) working days before the scheduled date of hearing. In such hearing, the representative of the labor organization shall have the right to present its side.[38]

3. *Appeal*

The labor organization may, within ten (10) working days from receipt of the decision cancelling or revoking its certificate of registration, file an appeal to the Bureau on any of the following grounds:

(a) grave abuse of discretion; and

(b) gross incompetence.

The Bureau shall have twenty (20) working days from receipt of the records of the case within which to decide the appeal. Its decision shall be final and unappealable.[39]

F. RESTRUCTURING THE LABOR MOVEMENT

1. *"One union — One industry" Concept*

The primary objective in restructuring the labor movement is to eradicate inter-union and intra-union conflicts. To achieve this end, the Code has introduced the "one union — one industry" concept.

Under this concept, the Bureau, upon consultations with workers' and employers' representatives and subject to the approval of the Secretary of Labor, shall divide the economy into appropriate and viable industry groups, each of which may in turn be divided into appropriate and viable sub-groups as circumstances and policy may require.[40]

After the economy shall have been divided into appropriate and viable industry groups, a process of selection or appropriate identification of a national union or federation assigned to each industry shall be under-

[37] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule II, sec. 8.

[38] *Ibid.*, sec. 9.

[39] *Ibid.*, sec. 10.

[40] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule III, sec. 1.

taken either on a regional or national basis. The objective as aforementioned is clear but the strategies of accomplishing it are still to be plotted out. So much effort has already been exerted along this direction but so far, concrete results have yet to be produced. As a matter of fact, labor leaders have been pre-occupied in these restructuring efforts for the past two years with the hope that, eventually, they will be able to come up with a restructured labor movement.

2. *"Equity of the Incumbent" Principle*

To obviate initial obstacles towards the implementation of the "one union — one industry" concept, the "equity of the incumbent" principle was evolved. As circumscribed by the Code, "all existing federations and national unions which meet the qualifications of a legitimate labor organization and none of the grounds for cancellation shall continue to maintain their existing affiliates regardless of the nature of the industry and the location of the affiliates.[41]

G. INTER-UNION AND INTRA-UNION DISPUTES

1. *Jurisdiction and Adjudication*

Under the Labor Code, 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.[42]

Under the Industrial Peace Act, these issues were cognizable by the Court of Industrial Relations and it is worthy to note that neither the *ad hoc* National Labor Relations Commission created under Presidential Decree No. 21 (1972) nor the present National Labor Relations Commission under Presidential Decree No. 442 (1974) has acquired jurisdiction over these matters.

> "The jurisdiction of the *ad hoc* National Labor Relations Commission created under Presidential Decree No. 21 as well as the present Commission created under Presidential Decree No. 442 as amended, does not embrace intra-union disputes and cases involving rights and conditions of membership. It is clear, therefore, that under Republic Act No. 875, the Court of Industrial Relations until its abolition on October 31, 1974 continued to exercise such jurisdiction. Thereafter, upon the effectivity of Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines on November 1, 1974, the Labor Relations Division and the Bureau of Labor Relations acquired this jurisdiction. Only CIR cases involving such issues could be jurisdictionally transferred to, for appropriate disposition by, the corres-

[41] LABOR CODE, art. 240.
[42] LABOR CODE, art. 225.

ponding Labor Relations Division pursuant to Article 289 of the Labor Code, the pertinent portion of which is hereby quoted as follows:

> "ART. 289. Disposition of pending cases. — All cases pending before the Court of Industrial Relations and the National Labor Relations Commission established under Presidential Decree No. 21 on the date of effectivity of this Code shall be transferred to and processed by the corresponding Labor Relations Division and the National Labor Relations Commission created under this Code having cognizance of the same in accordance with the procedure laid down herein and its implementing rules and regulations. Cases on labor relations on appeal with the Secretary of Labor or the Office of the President of the Philippines as of the date of effectivity of this Code shall remain under their respective jurisdiction and shall be decided in accordance with law, rules and regulations in force at the time of appeal."
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> "This is precisely so, because the *ad hoc* Commission, in such cases, if ever it entertained them as in the instant case, could not validly transfer jurisdiction — where none exists over these cases — to the appropriate Labor Relations Division and much more to this Commission under the terms of Article 289 of the Labor Code as aforecited."[43]

2. *Rights and Conditions of Membership*

The rights and conditions of membership in a labor organization are defined under Article 241 of the Labor Code. Any violation of said rights shall be a ground for cancellation of union registration or expulsion of an officer from office, whichever is appropriate.

2.1 — *Changes Under the Labor Code from Republic Act No. 875 (1953)*

Under the Industrial Peace Act, a minimum of ten percent (10%) of the members of a labor organization may report an alleged violation of internal labor organization's procedures to the Court of Industrial Relations. If the said Court finds, upon investigation, evidence to substantiate the alleged violation and that efforts to correct the alleged violation through the procedures provided by the labor organization's constitution and by-laws have been exhausted, the court shall dispose of the complaint as in "unfair labor practice" cases.[44]

The foregoing requirements have already been modified by the provisions of the Labor Code: firstly, the minimum requirement of ten per cent of the membership to initiate the complaint is now increased to at least thirty per cent (30%) if the issue involves the entire membership

[43] Canlas v. Mindanao Federation of Labor, NLRC Case No. 509, April 22, 1975.
[44] Rep. Act No. 875 (1953), sec. 17.

of the union; secondly, if the issue affects a single member only, such member may alone file his complaint; thirdly, the venue of the complaint is with the Labor Relations Division of the appropriate Regional Office of the Department of Labor; and fourthly, the complaint is no longer disposable like an "unfair labor practice" case.

Another modification is the term of office of elective union officials which the Code, through the Implementing Rules and Regulations, has now fixed at three (3) years instead of two (2) years under the Industrial Peace Act.[45]

H. Representation Issues

The resolution of representation issues as a pre-requisite to collective bargaining would necessarily give rise to a particular union's recognition as the exclusive bargaining representative of a defined collective bargaining unit. This can be achieved either by (a) voluntary recognition extended by management after satisfying itself that such union commands majority membership among the rank and file employees embraced within the bargaining unit, or, by (b) compulsory recognition in case the union is certified by the med-arbiter assigned to the case, or, in proper cases, by the Director of the Bureau of Labor Relations.

1. *Certification Cases*

1.1 *Where to file*

A petition for certification election may be filed with the Regional Office which has jurisdiction over the employer. The petition shall be in writing and under oath.

Where two or more Regional Offices have jurisdiction over an employer, the Regional Office which shall first acquire jurisdiction over the petition shall exclude the others.

If the petition covers an industry group or sub-group, the petition shall be filed with the Bureau.[46]

1.2 *Who May File Petition*

The employer or any legitimate labor organization may file the petition.

The petition when filed by a legitimate labor organization, shall contain, among others:

(a) the name of petitioner and its address and affiliation, if any;

(b) name, address and nature of the employer's business;

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[45] Labor Code, art. 241(c); Rules and Regulations Implementing the Labor Code, Book V, Rule II, sec. 5(d).

[46] Rules and Regulations Implementing the Labor Code, Book V, Rule V, sec. 1.

(c) description of the bargaining unit which shall be the employer unit unless circumstances otherwise require;
(d) approximate number of the employees in the alleged bargaining unit;
(e) names and addresses of other legitimate labor organizations in the bargaining unit;
(f) the signatures of at least 30% of the employees in the bargaining unit supporting the petition; and
(g) other relevant facts.

When the petition is filed by an employer, it shall contain among others:

(a) the name, addresses and general nature of the employer's business;
(b) names and addresses of the legitimate labor organizations involved;
(c) approximate number of the employees in the appropriate bargaining unit;
(d) description of the bargaining unit which shall be the employer unit unless circumstances otherwise require; and
(e) other relevant facts.[47]

1.3 *When to file*

In the absence of a certified collective bargaining agreement, a petition for certification election may be filed anytime. However, no certification election can be held oftener than once every twelve (12) months from date of last election. If there exists a certified collective bargaining agreement, a petition for certification election may only be entertained within sixty (60) days prior to the expiry date of such agreement.

1.4 *When to File Motion for Intervention in Certification Election Proceedings*

Motion for intervention in certification election proceedings may be filed at any time at any stage thereof by the intervenor union which shall be reduced in writing and under oath stating specifically the grounds therefor.[48]

1.5 *Where to File Motion for Intervention*

The motion for intervention in certification election proceedings shall be filed before the med-arbiter assigned to the case. The mere filing of said motion, however, will not suspend the holding of the certification election without an order issued by the med-arbiter.[49]

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[47] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule V, sec. 2.
[48] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule V, sec. 4.
[49] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule V, sec. 5.

1.6 *Procedure*

Upon receipt of a petition, the Regional Director shall assign the case to a med-arbiter for hearing. The med-arbiter shall have twenty (20) working days within which to deny or grant the petition. In either case, he shall state the grounds therefor. The decision shall contain the following:

(a) names of the contending unions;
(b) name of the employer;
(c) description of the bargaining unit; and
(d) list of eligible voters.

The certification election shall be held within twenty (20) days from receipt of the order by the parties.[50]

1.7 *Appeal*

Any aggrieved party may appeal the order of the med-arbiter to the Bureau only on any of the following grounds:

(a) grave abuse of discretion; and
(b) gross incompetence.

The appeal shall specifically state the grounds relied upon by the appellant with supporting memorandum of arguments.[51]

1.8 *Where to File Appeal*

The appellant shall file his appeal in the Regional Office where the case originated, which appeal shall be under oath, copy furnished the appellee.[52]

1.9 *Period of Appeal*

The appeal shall be filed within ten (10) working days from receipt of the order by the appellant. Likewise, the appellee shall file his answer thereto within ten (10) working days from receipt of the appeal. The Regional Director shall immediately forward the entire records of the case to the Bureau.[53]

1.10 *Decision of the Bureau is Final and Unappealable*

The Bureau shall have twenty (20) working days within which to decide the appeal from receipt of the records of the case. The decision of the Bureau in all cases shall be final and unappealable.[54]

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[50] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule V, sec. 6.
[51] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule V, sec. 7.
[52] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule V, sec. 8.
[53] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule V, sec. 9.
[54] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule V, sec. 10.

1.11 *Execution Pending Appeal*

The execution of the order of the med-arbiter shall not be stayed by an appeal unless otherwise ordered by the Bureau.[55]

I. STATE SUPERVISION OF UNIONS

1. *Visitorial Power*

The right or authority of the Secretary of Labor under Republic Act No. 1941 (1957) is presently incorporated under the Labor Code, particularly Article 264 thereof, providing as follows:

> "ART. 264. *Visitorial power.* — The Secretary of Labor or his duly authorized representative is hereby empowered to inquire, from time to time, into the financial activities of legitimate labor organizations and to examine their books of accounts and other records to determine compliance or non-compliance with the law and to prosecute any violation of the law and the union constitution and by-laws."

The validity of such visitorial power vested in the Secretary of Labor over the financial activities of labor organizations has been upheld by the Supreme Court in *Philippine Association of Free Labor Unions (PAFLU) v. Secretary of Labor.*[56] The law then, Republic Act No. 1941 (1957), which amended Section 23 (e) of Republic Act No. 875 (1953), reads as follows:

> "Provisions of Commonwealth Act Numbered Two Hundred and Thirteen providing for registration, licensing, and cancellation of registration of organizations, associations, or union of labor, as qualified and expanded by the preceding paragraphs of this Act, are hereby amended; Provided, however, that the Secretary of Labor or his duly authorized representative is hereby empowered to inquire, from time to time, into the financial activities of any legitimate labor organization and to examine its books of accounts and other financial records to determine compliance or non-compliance with the laws and to aid in the prosecution for any violation thereof.
>
> "The Secretary of Labor shall appoint such accounts examiners as may be necessary for carrying out the purpose of this Section."

In upholding the validity of the visitorial power of the Secretary of Labor in the case of *PAFLU v. Secretary of Labor,*[57] the Supreme Court made the following observations:

> "Respondents authority under said Act is limited to an inquiry into the financial activities of any legitimate labor organization and to the examination of "its books of accounts and other financial

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[55] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule V, sec. 11.
[56] G.R. No. L-21321, April 29, 1966, 16 SCRA 685-691 (1966).
[57] *Supra.*

> records to determine compliance with the laws and to aid in the prosecution for any violations thereof." Certainly, none of the provisions of Conventions 37 and 98 seek to protect or shield labor organizations which violate said laws. Upon the other hand, Republic Act No. 1941 merely tries to forestall the misuse of funds of the union officers thereof, by restoring to the Secretary of Labor a visitorial power he had under Commonwealth Act No. 213, which had not been included in Republic Act No. 875. Needless to say, if respondent should use the powers under Republic Act No. 1941 in such an arbitrary or oppressive manner as to impair the rights of the workers or of their organization, then the remedy would be to challenge the action thus taken, "not to invalidate the law" — in the language used in Philippine Association of Colleges and Universities vs. Secretary of Education (51 Off. Gaz., 6230)."

It is of interest to note that under Republic Act No. 1941 (1957), the Secretary of Labor is limited to an inquiry into the financial activities of any legitimate labor organization, and to determine compliance or non-compliance with the laws and to aid in the prosecution for any violation thereof; however, under the present Code, his powers are broadened to include violations of the union constitution and by-laws and furthermore, made more effective as the said official can now, *motu proprio,* prosecute such violations. Moreover, the visitorial power exercised by the Department of Labor is made more pervasive under the terms of Article 225 of the Code which is reproduced hereunder:

> "ART. 225. *Bureau of Labor Relations.* — The Bureau of Labor Relations and the Labor Relations Division 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."

The present Code has incorporated new provisions as aforecited, the validity and constitutionality of which have yet to be duly passed upon. Looking back to the case of *PAFLU v. Secretary of Labor,*[58] petitioner PAFLU therein assailed the validity and constitutionality of Republic Act No. 1941 (1957) on the ground that it is violative of Conventions 87 and 98 of the International Labor Organization which is an international agreement to which the Philippine is a party. The Supreme Court did not consider the necessity of passing upon the issue of constitutionality of said Act as it found that "x x x none of the provisions of Conventions 87

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[58] *Supra.*

and 98 seek to protect or shield labor organizations which violate said laws," and that " x x x Republic Act No. 1941 (1957) merely tries to forestall the misuse of funds of the union by officers thereof x x x". Of pertinence is the following portion of the said decision:

> "It is argued by petitioner herein that this proviso is inconsistent with Article 3, 4, 7 and 8 of said Convention 87, to which the Philippines is a party, reading:
>
> "1. Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes.
>
> "2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof. (Article 3).
>
> "Workers' and employers' organizations shall not be dissolved or suspended by administrative authority". (Article 4).
>
> "The acquisition of legal personality by workers' and employers' organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof". (Article 7).
>
> "3. The law of the land shall not be such as to impair, nor shall it be so applied to impair the guarantees provided for in this Convention". (Article 8)
>
> "We are not aware of, and petitioner has not cited, any provision of Convention No. 1941, except insofar as said Convention, like Convention No. 87, provides for the time and procedure for denunciation by any of the contracting parties, thus indicating that the latter, are, prior thereto, bound to comply with the provisions of both Conventions.
>
> "Moreover, petitioner assumes that an act of Congress is unconstitutional and/or invalid if it contravenes an international agreement to which the Philippines is a party. Without passing upon the validity or accuracy of this predicate, we find that petitioner's contention is untenable. Indeed, we see no conflict between Republic Act No. 1941, on the one hand, and any of the provisions of said Conventions. There is in said Republic Act No. 1941 nothing that may authorize respondent either to interfere in the right of workers' and employers' organizations to draw up their constitutions, to freely elect their representatives, to organize their administration and activities and to formulate their programmes, or to dissolve or suspend said organizations, or to subject the acquisition of legal personality thereof to such conditions as to restrict or impair the rights aforementioned."[59]

In the case, the Supreme Court concluded that Republic Act No. 1941 (1957) is concerned with the authority of the Department of Labor

[59] *Ibid.*, at 687-688.

to inquire into the financial activities of said organization in order "to determine compliance or noncompliance with the laws and to aid in the prosecution for any violations thereof."

The Labor Code, however, embraces much more than what Republic Act No. 1941 (1957) circumscribed, by virtue of Articles 225 and 264 of said Code.