

Philippines

Introduction

The 1987 Philippine Constitution recognizes and affirms labor as a primary social economic force. As such, the rights of workers are protected and their welfare is promoted. The Constitution guarantees the right of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with the law.

Trade Unions

The General Role Of The Trade Union

Article 212(g) of the Philippine Labor Code defines a labor organization as any union or association of employees that exists in whole or in part for the purpose of collective bargaining or for dealing with employers in relation to the terms and conditions of employment.

Only a legitimate labor organization may enjoy collective bargaining rights. A labor organization that has not been registered with the Philippine Department of Labor and Employment (DOLE) cannot exercise such rights since it has no legal personality. Once registered, a legitimate labor organization acquires a separate juridical personality vested with certain rights under the law.

Constitution Of The Trade Union

Managerial employees are not eligible to join, assist, or form any labor organization. On the other hand, supervisory employees are not eligible for membership in a labor organization of the rank-and-file employees but may join, assist, or form separate labor organizations of their own. A rank-and-file union and a supervisors' union operating within the same establishment may join the same federation or national union. In all cases in which the law allows the formation of a union at the enterprise level, such union may be created either by independent registration or by chartering.

Independent Registration

Independent registration is obtained by the union organizers in an enterprise through their own action. The union thus created has a legal personality of its own and is called an independent union. The application for registration of an independent union must be supported by the following:

1. The names of its officers, their addresses, the principal address of the labor organization, minutes of the organization's meetings, and the list of workers who participated in such meetings;
2. The number of employees and names of all its members comprising at least 20% of the employees in the bargaining unit where it seeks to operate (a bargaining unit refers to a group of employees sharing mutual interests within a given employer unit, comprised of all or less than all of the entire body of employees in the employer unit or any specific occupational or geographical grouping within the unit. However, the inclusion of employees outside the bargaining unit as union members shall not be a ground for the cancellation of the registration of the union. Said employees are automatically deemed removed from the list of membership of said union);
3. Two copies of its annual financial reports if the applicant union has been in existence for at least one year, unless it has not collected any amount from the members, in which case a statement to this effect must be included in the application; and
4. Four copies of its constitution and by-laws, minutes of its adoption or ratification, and the list of the members who participated in the adoption or ratification. However, the list of ratifying members may be dispensed with where the constitution and by-laws were ratified or adopted during the organizational meeting, in which case, the factual circumstances of the ratification shall be recorded in the minutes of the organizational meeting.

The application for registration and all the accompanying documents must be verified under oath by the secretary or treasurer and attested to by its president.

The application for registration must be filed with the regional office of the DOLE that has jurisdiction over the place where the applicant's principal office is located. It shall be processed by the Labor Relations Division at the regional office. The regional office shall act on the application within 10 days from receipt thereof.

It may approve the application and issue a certificate of registration upon the applicant's payment of the prescribed registration fee or deny the application for the applicant's failure to comply with the requirements for registration.

If the documents supporting the application are not complete or do not contain the requisite attestation requirements, the regional office shall, within five days from receipt of the application, notify the applicant in writing of the requirements needed to complete the application. If the applicant fails to complete the requirements within 30 days from receipt of such notice, the application shall be denied without prejudice to a subsequent application.

In case of denial of the application for registration, the notice of denial shall be in writing stating in clear terms the reasons for the denial. Such denial may be appealed to the Bureau of Labor Relations within 10 days from receipt of notice of denial on the ground of grave abuse of discretion or violation of the Philippine Labor Code or its Implementing Rules.

The labor union is deemed registered and vested with legal personality on the date of issuance of its certificate of registration. Such legal personality cannot be subject to collateral attack, but may be questioned only in an independent petition for cancellation.

The cancellation of a labor union's certificate of registration can be made only through an independent petition for that purpose, after due hearing, and only upon the following grounds:

- Misrepresentation, false statement, or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification;
- Misrepresentation, false statement, or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters; or
- Voluntary cancellation by the organization itself; Provided that in such a case, at least two-thirds of the organization's general membership votes, in a meeting duly called for that purpose, to dissolve the organization; Provided, further, that an application to cancel registration is thereafter submitted by the board of the organization, attested to by the president.

However, despite a pending petition for cancellation of the certificate of registration of a labor union, a union still enjoys the rights vested upon it by law. As such, the Philippine Labor Code expressly provides that a petition for cancellation of union registration shall neither suspend the proceedings for certification election initiated by the union nor prevent the filing of a petition for certification election by such union. Moreover, even if union registration is cancelled, the law reserves for the union the right to seek just and equitable remedies in the appropriate courts.

Chartering

Chartering takes place when a duly registered federation or national union issues a charter to a union in an enterprise, thereby indicating its direct creation of one of its local chapters. The union recipient of the charter is normally called a chapter. However, such chapter, from the date of issuance of the charter, acquires legal personality only for the purpose of filing a petition for certification election. It shall be entitled to all other rights and privileges of a legitimate labor organization (discussed in the immediately following section) only upon the submission to the Bureau of Labor Relations (BLR) of the following documents in addition to its charter certificate:

- The names of the chapter's officers, their addresses, and the principal office of the chapter; and
- The chapter's constitution and by-laws; Provided, that where the chapter's constitution and by-laws are the same as that of the federation or the national union, this fact shall be indicated accordingly.

The additional supporting requirements shall be certified under oath by the secretary or treasurer of the chapter and attested to by its president.

The Scope Of Trade Union Rights In Businesses

In the Philippines, legitimate labor unions have the following rights:

1. To act as the representative of its members for the purpose of collective bargaining;
2. To be certified as the exclusive representative of all the employees in the appropriate collective bargaining unit for the purposes of collective bargaining;
3. To be furnished by the employer, upon written request, with its annual audited financial statements, including the balance sheet and the profit and

loss statement, within 30 calendar days from the date of receipt of the request, after the union has been duly recognized by the employer or certified as the sole and exclusive bargaining representative of the employees in the bargaining unit, or within 60 calendar days before the expiration of the existing collective bargaining agreement, or during the collective bargaining negotiation;

4. To own property, real or personal, for the use and benefit of the labor organization and its members;
5. To sue and be sued in its registered name;
6. To undertake all other activities designed to benefit the organization and its members, including cooperative, housing welfare, and other projects not contrary to law; and
7. Unless withdrawn by special law expressly repealing this privilege, to be free from taxes, duties, and other assessments relating to the income and properties of legitimate labor unions, including grants, endowments, gifts, donations, and contributions they may receive from fraternal and similar organizations, local or foreign, which are actually, directly, and exclusively used for their lawful purposes.

In addition, labor organizations have the right to engage in peaceful concerted activities, including the right to go on strike in accordance with the law. Any certified or duly recognized bargaining representative may declare a strike in cases of bargaining deadlocks and unfair labor practices.

Violations of collective bargaining agreements, except flagrant and/or malicious refusal to comply with its economic provisions, shall not be considered unfair labor practices and are therefore not sufficient reasons to hold a strike.

In the absence of a certified or duly recognized bargaining representative, any legitimate labor organization in the establishment may declare a strike, but only on account of an unfair labor practice.

No strike may be declared on the grounds of inter-union and intra-union disputes or of issues brought to voluntary or compulsory arbitration.

The Function Of Trade Union Representatives

The law aims at employee participation in policy and decision-making processes in a company insofar as those processes will directly affect the workers' rights, benefits, and welfare.

The general function of a union is to represent its members particularly against an employer's unfair labor practices against it or any of its members, and to file actions for their benefit and behalf, without joining them to avoid the cumbersome procedure of joining each and every member as a separate party.

The labor organization designated or selected by the majority of the workers in an appropriate collective bargaining unit shall be the exclusive representative of the workers in that unit for the purpose of collective bargaining. The designation of a representative in a bargaining unit, however, does not deprive an individual worker or group of workers of the ability to exercise, at any time, their right to present grievances to the employer, with or without the intervention of the bargaining unit. The representative of the bargaining unit represents not only its members, but also non-members who are embraced within the bargaining unit.

An establishment may have one or several bargaining units that are represented by different labor organizations - one for every bargaining unit. It is possible that several labor organizations may seek the status of exclusive representation in one bargaining unit. In this case, the issue of exclusive representation for collective bargaining with the employer is resolved through a certification election.

A certification election is the process of determining, through secret ballot, the sole and exclusive bargaining agent of the workers in an appropriate bargaining unit for purposes of collective bargaining. The purpose of a certification election is to determine the wishes of the majority of the workers in an appropriate bargaining unit – whether or not they wish to be represented by a labor organization, and if so, by which particular labor organization.

Works Councils

General Requirements And Principles

Under Article 277(h) of the Philippine Labor Code, labor-management councils may be formed in establishments where no legitimate labor organization exists.

These councils may be voluntarily formed for the purpose of promoting industrial peace. The DOLE, however, also encourages the establishment of labor-management councils in organized establishments.

The labor-management councils are envisioned to be a non-adversarial, consultative, and consensual forum where designated representatives of workers and the employer may regularly dialogue on matters affecting employment and other matters of mutual interest. The labor-management councils are intended to enable workers to participate in policy and decision-making processes in the establishment, insofar as said processes will directly affect the worker's rights, benefits, or welfare, except those that are covered by collective bargaining agreements or are traditional areas of bargaining.

Election Of Works Councils

In organized establishments, the exclusive bargaining representative shall nominate the workers' representatives to the labor-management council. On the other hand, in establishments where no legitimate labor organizations exist, the workers' representative shall be elected directly by the workers at large.

Functions Of Works Councils

The labor-management councils may, at their own initiative or in conjunction with the DOLE, formulate and develop programs and projects on productivity, occupational safety and health, improvement of quality of work life, product quality improvement, and other similar schemes.

The DOLE shall assist the workers and the employers in the formation of labor-management councils. The DOLE likewise shall provide process facilitators during labor-management council meetings and shall monitor the activities of the councils.

Enforcement Issues

The National Conciliation and Mediation Board shall have original and exclusive authority to act, at its own initiative or upon request of either or both parties, on all disputes, grievances, or problems arising from or affecting labor-management relations, except those arising from the implementation or interpretation of collective bargaining agreements, which shall be the subject of a grievance procedure and/or voluntary arbitration.

Trade Union Employee Protection Rights

An employer is prohibited from interfering with the normal rights and responsibilities of a trade union. Under Article 248 of the Philippine Labor Code, such actions are considered unfair labor practices, which include:

1. Interfering with, restraining, or coercing employees in the exercise of their right to self-organization;
2. Requiring, as a condition of employment, that a person or an employee shall not join a labor organization or shall withdraw from one to which he or she belongs;
3. Contracting out services or functions being performed by union members when such will interfere with, restrain, or coerce employees in the exercise of their rights to self-organization;
4. Initiating, dominating, assisting, or otherwise interfering with the formation or administration of any labor organization, including giving financial or other support to it or its organizers or supporters;
5. Discriminating with regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. (Nothing in the Labor Code, or in any other law, shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition of employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective agreement, provided that the individual authorization required under Article 242, paragraph (o), of the Labor Code shall not apply to the non-members of the recognized collective bargaining agent);
6. Dismissing, discharging, or otherwise prejudicing or discriminating against an employee for having given or being about to give testimony under the Labor Code;

7. Violating the duty to bargain collectively as prescribed by the Labor Code;
8. Paying negotiation or attorneys fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or
9. Violating a collective bargaining agreement.

The provisions of the preceding paragraph notwithstanding, the officers and agents of corporations, associations, or partnerships, who have actually participated in, authorized, or ratified unfair labor practices, may be held criminally liable.