Tiers of Resolution in Philippine Labor Dispute Settlement

Hans Leo J. Cacdac*

INTRODUCTION: THE PERIL OF MISCONCEPTION

Imagine if you will a fresh college graduate willing to educate herself on the finer points of Philippine labor law. It will probably take her a P20 to P40 jeepney or bus ride to and back from the local bookstore, and roughly P400 to P500 to avail of a copy of the Labor Code of the Philippines.

It will cost our fresh college graduate merely P550 to leaf through the pages that have brought life to labor and employment regulation for the last 30 years. When she encounters the provisions on Book V concerning Labor Relations, she will be apprised of the State policies on labor relations in Article 211 that recognize, among others: (a) the primacy of free collective bargaining; (b) provision of an adequate administrative machinery for the expeditious settlement of labor or industrial peace; (c) ensuring a stable but dynamic and just industrial peace; and (d) ensuring the participation of workers in decision and policy-making processes affecting their rights, duties and welfare.

Our guileless subject will also get past the banal task of sorting out the definition of terms in Article 212, and arrive at the first major set of provisions embodied in Titles II and III, Articles 213-233 – the adjudicatory framework carried out by the National Labor Relations Commission (NLRC) and the Bureau of Labor Relations (BLR). She will discover that concepts of conciliation, mediation, and voluntary arbitration vested under the National Conciliation and Mediation Board (NCMB) are introduced in the form of a footnote, realizing such functions of the BLR under Article 226 were transferred to the NCMB through Executive Order Nos. 126 and 251, series of 1987.

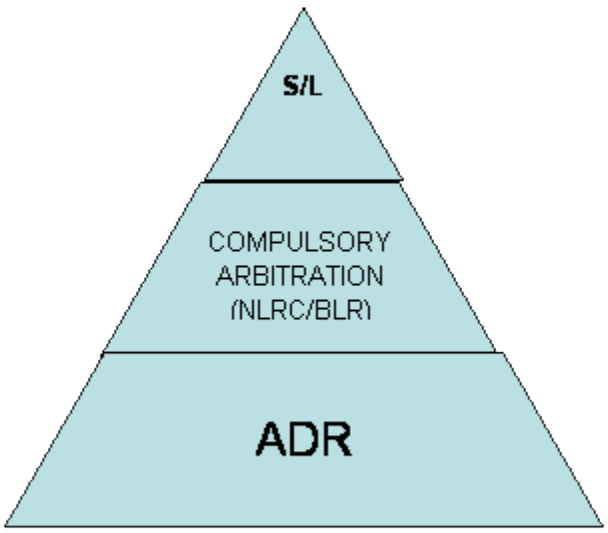
She will learn that the grievance machinery and voluntary arbitration framework under Title VII-A follow a thorough elaboration of the laws on unionization and collective bargaining, and that conciliation and mediation by the NCMB are within the context of strikes and lockouts under Title VIII.

Finally, our precocious graduate may altogether ignore the second paragraph of Article 255 and the miscellaneous provisions in Article 277 (g) and (h), which inadvertently obscure the introduction of workplace cooperation arrangements.

All told, our fresh college graduate shall part with P550 and come away with her reading of the Labor Code with the knowledge that the NLRC and BLR are primordial options to dispute resolution; that plant-level grievance resolution and voluntary arbitration are exclusively attached to unionization and collective bargaining; that less confrontational approaches to dispute resolution such as conciliation and mediation transpire only in a strike or lockout scenario; and that workplace cooperation arrangements are peripheral to the contours of Philippine labor relations law.

The purpose of this paper is to disabuse such mistaken notions. This writer will uphold the pursuit of a "just, stable, and dynamic industrial peace," most notably the "tiers of resolution" implemented by agencies established under Book V of the Labor Code. Figure 1 illustrates these "tiers of resolution", with alternative modes of dispute resolution constituting the first line of defense, followed by compulsory arbitration and the strike or lockout (S/L) interventions under Title VIII.

FIGURE 1 – "TIERS OF RESOLUTION"



II. First Line Of Defense: Alternative Dispute Resolution (ADR)

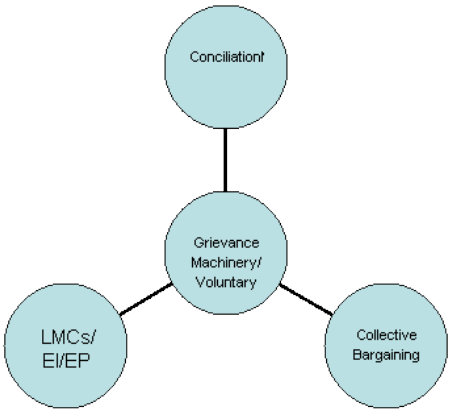
By virtue of Commonwealth Act No. 103, the State laid its "hands off" plant-level labor-management relations, and took a compulsory arbitration approach to dispute resolution with the creation of the Court of Industrial Relations (CIR).

This approach, however, was permanently abandoned with the introduction of collective bargaining in 1953 (through Republic Act No. 875 or the Industrial Peace Act), and the development of grievance handling and voluntary arbitration, workplace cooperation, and conciliation and mediation in 1974 (through the Labor Code) and the 1980s (through the 1987 Constitution, and Republic Act No. 6715).

To this day, compulsory arbitration remains an integral component of labor dispute settlement, but its historical attachment to the plant level *laissez faire* approach has underscored the importance of "alternative modes" of dispute resolution in the enterprise. Such alternative modes have truly come to the fore.

Figure 2 illustrates the ADR framework under current labor laws, involving conciliation-mediation, voluntary arbitration, grievance handling, workplace cooperation (LMCs), employee involvement and participation (EI/EP) schemes, and collective bargaining:

FIGURE 2 – ADR FRAMEWORK



A.Dispute Prevention Through Employee Involvement and Participation

Section 3, Article XIII of the 1987 Constitution and Article 211 (g) of the Labor Code establish a State policy to ensure the participation of workers in decision and policy-making processes affecting their rights, duties, and welfare. While the Supreme Court has affirmed this participatory right in two cases involving unionized establishments (*PAL v. NLRC* [1993], *MERALCO v. Secretary of Labor* [1999]), the rule applies to unorganized establishments as well.

Experts have pointed out essential conditions to have an effective participatory enterprise with EI and EP schemes, to wit:[1]

- Various stakeholders in the enterprise must recognize the problems inherent in the operation of participative schemes and set realistic goals.
- Participation must be perceived as instrumental to the attainment of goals valued by each party.
- A firm belief in and commitment to the participative processes on the part of key management officials at all levels of the enterprise is crucial.
- Availability of accurate, opportune, systematic, and relevant information about the enterprise to all those involved in participative schemes and meaningful communications to the work force at all levels about the operations of participative schemes are important.
- Acquisition of systematic knowledge and experience in managerial, economic, and technical fields on the part of all those involved in participative schemes.
- Participation should take place at the appropriate levels in an enterprise in a spirit of mutual trust, and various forms of participation (e.g. collective bargaining and LMCs) must be integrated into the total system.

B. *Workplace Cooperation*

The second paragraph of Article 255 of the Labor Code upholds the right of workers to participate in policy- and decision-making processes of the

establishment insofar as said processes will directly affect their rights, benefits, and welfare. For this purpose, workers and employers may form labor-management councils, provided that the representatives of the workers shall be elected by at least the majority of all employees in the establishment.

Under Article 277 (g), the Department of Labor and Employment (DOLE) is mandated to promote and gradually develop, with the agreement of labor organizations and employers, labor management cooperation programs at appropriate levels of the enterprise based on shared responsibility and mutual respect in order to ensure industrial peace and improvement in productivity, working conditions and the quality of working life.

In establishments with no legitimate labor organizations, labor management committees or councils (LMCs) may be formed voluntarily by workers and employers for the purpose of promoting industrial peace.

Under the rules issued by the DOLE Secretary to implement Articles 277 (g) and (h), in organized establishments, the workers' representatives to the LMC shall be nominated by the exclusive bargaining representative. In establishments where no legitimate labor organization exists, the workers' representative shall be elected directly by the employees at large.

LMCs have been prescribed to maintain the following characteristics:[2]

- A voluntary body composed jointly of representatives from workers and management who meet to identify and resolve issues of common interest. These issues, if there is a union are normally outside the collective bargaining agreement.

- A non-adversarial relationship between labor and management for resolving common problems and reaching common goals.

- A forum for discussion of problems that might otherwise develop into disputes.

- Another dimension to the employer-employee relationship and a significant instrument for improving labor relations.

Dean Gatchalian has emphasized that LMCs are not a substitute for collective bargaining and are not a forum to replace the grievance procedure under a CBA in organized establishments. He also veered away from the misconception that LMCs are an "instant solution" to labor-management problems,[3] suggesting the importance of socio-cultural and political maturity over workplace palliatives of a mere structural nature.

Under the Productivity Incentives Act (R.A. 6971), disputes, grievances or other matters arising from the interpretation of a productivity incentives program shall be resolved by a labor-management committee. Any dispute which remains unresolved within 20 days from the time of its submission to the LMC shall be submitted to voluntary arbitration.

C. Collective Bargaining

Free collective bargaining is the primary mode of settling labor and industrial disputes. It is a process for labor and management to settle issues respecting terms and conditions of employment. This economic relationship could only exist between a duly-selected or designated labor union or association "dealing with" with the employer. For this purpose, interference with the right to self-organization was considered an "unfair labor practice", the prevention of which was placed under the jurisdiction of the NLRC. And through the enumerated rights and conditions of union membership, the law leans heavily towards the promotion of responsible unionism.

To eliminate the causes of industrial unrest and the promotion of a sound and stable industrial peace, a ban on governmental intervention in union-management relations was necessary. As a general rule, therefore, courts, commissions or boards do not have jurisdiction to issue any restraining order or injunction in any case involving or growing out of a labor dispute. More importantly, no court has the power to set wages, rates of pay, hours of employment or conditions of employment, to prevent undue restriction of free enterprise for capital and labor and to encourage the truly democratic method of regulating the relations between the employer and employee by means of an agreement freely entered into through collective bargaining.

A regulatory regime was installed to provide a system of registration of labor organizations, as well as an electoral mechanism to select a sole and exclusive bargaining agent.

D. Grievance Procedures

Under the first paragraph of Article 255 of the Labor Code, an individual employee or group of employees shall have the right at any time to present grievances to their employer.

Azucena points out that since individual representation in dealing or bargaining with the employer is weak, grievance presentation can be undertaken through the LMC or by a sole and exclusive bargaining agent.[4]

Under Article 260, parties to a CBA shall include provisions that ensure the mutual observance of its terms and conditions. They shall establish a machinery for the adjustment and resolution of grievances arising from the interpretation or implementation of the CBA and those arising from the interpretation or enforcement of company personnel policies. The Supreme Court has defined "company personnel policies" as guiding principles stated in broad, long-range terms that express the philosophy or beliefs of an organization's top authority regarding personnel matters. The usual sources of grievances are rules and regulations governing disciplinary actions.[5]

The rules implementing the Labor Code contain a default grievance procedure that applies to the following: (a) CBAs with no specific procedures for handling grievances; and (b) management personnel policies in unorganized establishments that do not prescribe such procedures. This default procedure entails as follows:

- An employee shall present this grievance or complaint orally or in writing to the shop steward. Upon receipt thereof, the shop steward shall verify the facts and determine whether or not the grievance is valid.

- If the grievance is valid, the shop steward shall immediately bring the complaint to the employee's immediate supervisor. The shop steward, the employee, and his immediate supervisor shall exert efforts to settle the grievance at their level.

- If no settlement is reached, the grievance shall be referred to the grievance committee which have 10 days to decide the case.

- Where the issue involves or arises from the interpretation or implementation of a provision in the collective bargaining agreement, or from any order, memorandum, circular or assignment issued by the appropriate authority in the establishment, and such issue cannot be resolved at the level of the shop steward or the supervisor, the same may be referred immediately to the grievance committee.

The second paragraph of Article 260 requires that all grievances submitted to the grievance machinery which are not settled within 7 calendar days from the date of its submission shall automatically be referred to voluntary arbitration prescribed in the collective bargaining agreement.

E. Voluntary Arbitration

Dubbed as a "private judicial system" by Azucena,[6] voluntary arbitration involves referral of a dispute by both parties to an impartial third person for a final and binding resolution. Voluntary arbitrators (VAs) have original and exclusive jurisdiction over the following cases: (a) under Article 262 – upon agreement of both parties, all labor disputes; and (b) under Article 261 – based on grievance machinery provisions of a CBA, all unresolved grievances arising from the interpretation or implementation of the CBA and those arising from the interpretation or enforcement of company personnel policies.

Since a voluntary arbitrator acts in a quasi-judicial capacity, her decisions are within the ambit of judicial review by the Court of Appeals or the Supreme Court, where a question of law is involved or where there is abuse of authority or discretion in official acts.[7] Hence, decisions of VAs may be elevated to the Court of Appeals through Rule 43 appeals within 15 days from notice of decision or award.[8] From the Court of Appeals, the mode of appeal shall be Rule 45 petitions for review on certiorari to the Supreme Court.

Decisions of VAs, however, are afforded highest respect and as a general rule must be accorded a certain measure of finality,[9] as long as their findings are supported by substantial evidence.[10]

In addition, VAs have the plenary jurisdiction and authority to interpret agreements to arbitrate and determine the scope of his/her authority, such as the amount of performance bonus[11] and payment of regularization benefits.[12]

Pursuant to the new rules on voluntary arbitration proceedings issued by the Tripartite Voluntary Arbitration Advisory Council (TVAAC) and Department Order No. 40-03 issued by the DOLE Secretary, VAs acquire jurisdiction over a specific dispute upon receipt of either of the following: (a) submission agreement signed by the parties; (b) notice to arbitrate signed by a party to a CBA with an agreement to arbitrate; or (c) appointment of a VA by the NCMB.

Under Article 262-A, unless the parties agree otherwise, it shall be mandatory for the VA or panel of VAs to render an award or decision within 20 calendar days from the date of the submission of the dispute to voluntary arbitration. Upon motion of any interested party, the VA or panel of VAs or the Labor Arbiter in the region where the movant resides (in case of absence or incapacity of the VA), may issue a writ of execution requiring either the sheriff of the NLRC or regular courts or any public official whom the parties may designation in the submission agreement to execute the final decision, order, or award.

F. Conciliation/Mediation

The NCMB is mandated to perform preventive mediation and conciliation functions, as well as provide counselling and preventive mediation assistance. In the NCMB Manual of Procedures for Conciliation and Preventive Mediation Cases, "preventive mediation" pertains to potential labor disputes that are the subject of a formal or informal request for conciliation and mediation assistance sought by either or both parties or upon the initiative of the NCMB to avoid the occurrence of actual labor disputes.

Under the rules implementing the Labor Code, the NCMB may, upon request of either or both parties or upon its own initiative, provide conciliation-mediation services to labor disputes other than notices of strikes or lockouts.

Conciliation is a mild form of intervention by a neutral party, who relies on persuasive expertise and takes an active role in assisting parties to amicably settle a dispute. Mediation, on the other hand, involves a third party neutral who advises the parties and offers solutions of alternatives to the problems with the end in view of assisting them towards amicably settling a dispute.[13] This distinction between conciliation and mediation has been reduced to an academic exercise, considering the NCMB renders both services through its corps of conciliators-mediators.

In addition to the NCMB, other DOLE agencies such as the Legal Service, DOLE regional offices (especially undertaken by labor relations division [LRD] and labor standards enforcement division [LSED] personnel), and the NLRC conciliation and mediation unit offer con-med services to assist the parties in resolving a dispute. Conciliation and mediation of labor disputes has also been promoted by local government units and non-government organizations (NGOs) under the auspices of the Archbishop of Manila.

II. Compulsory Arbitration

Compulsory arbitration is resolution of a dispute by a disinterested third party whose decision is final and binding on the parties, where such third party neutral is appointed by the government.[14] There are appointed compulsory arbitrators in the following agencies: (a) DOLE regional offices and the DOLE Secretary (b) the BLR; and (c) the NLRC.

A. DOLE Regional Offices

Pursuant to Articles 128 and 129 of the Labor Code, as well as the rules implementing Book V, DOLE regional directors have original and exclusive jurisdiction over complaint or routine inspection disputes, union or CBA registration disputes, and cases involving aggregate money claims of an employee not exceeding P5,000. Their decisions may be appealed to either the DOLE Secretary (inspections), the National Labor Relations Commission (money claims), or the BLR (union or CBA registration cases).

Under Articles 256 and 257, as well as the rules implementing Book V, med-arbiters in DOLE regional offices have original and exclusive jurisdiction over intra-union and representation disputes. Their decisions may be appealed to the BLR (intra-union cases) or the DOLE Secretary (representation disputes).

B. Bureau of Labor Relations (BLR)

Pursuant to Article 226 of the Labor Code, the BLR has jurisdiction over intra-union (appellate jurisdiction) and inter-union (original jurisdiction) cases. The BLR likewise exercises original and exclusive jurisdiction over cases involving union federations or trade union centers.

C. National Labor Relations Commission (NLRC)

The NLRC is the main compulsory arbitration arm of the DOLE. It exercises original and exclusive jurisdiction over the following disputes:

- Under Article 217: unfair labor practice cases, termination disputes, (if accompanied with a claim for reinstatement), those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment, claims for damages arising from employer-employee relations, legality of strikes and lockouts, and money claims for more than P5,000.

- Under Article 218 (e): injunction to enjoin or restrain actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party.

In cases falling under Article 217, the case is initially heard and decided by Labor Arbiters in Regional Arbitration Branches (RABs), whose decisions may be appealed to one of five divisions in the Commission proper level. The Commission proper also resolves appeals from money claims decisions rendered by the DOLE Regional Director. Each Commission division has 3 members and is headed by a presiding commissioner. The first, second, and third divisions shall handle cases coming from the National Capital Regional and parts of Luzon; and the fourth and fifth divisions cases from the Visayas and Mindanao, respectively.

In resolving jurisdictional overlaps in illegal dismissal cases under labor arbiters (termination disputes under Article 217) and voluntary arbitrators (interpretation and implementation of company personnel policies under Articles 260 and 261), then DOLE Secretary Nieves R. Confesor issued Policy Instruction No. 56, series of 1993, which laid the following rules:

1. Termination cases arising in or resulting from the interpretation and implementation of collective bargaining agreements and interpretation and enforcement of company personnel policies which were initially processed at the various steps of the plant-level Grievance Procedures under the parties collective bargaining agreements fall within the original and exclusive jurisdiction of the voluntary arbitrator pursuant to Article 217 (c) and Article 261 of the Labor Code.

2. Said cases, if filed before a Labor Arbiter, shall be dismissed by the Labor Arbiter for lack of jurisdiction and referred to the concerned NCMB Regional Branch for appropriate action towards an expeditious selection by the parties of voluntary arbitrator or panel of arbitrators based on the procedures agreed upon in the CBA.

As recent as *Vivero v. Court of Appeals* (2000), the Supreme Court affirmed the efficacy of Policy Instruction No. 56, though admittedly in the aforementioned case the dispute involving a seafarer and a shipping company was decided by the NLRC. The Court held that the grievance machinery provision in the CBA showed the intention of the parties to submit an illegal termination dispute to the jurisdiction of the Labor Arbiter.

Pursuant to the first paragraph of Article 217, Labor Arbiters shall decide cases before them within 30 calendar days after submission of the case by the parties for decision, without extension and even in the absence of stenographic notes.

Under Article 223, decisions, awards, or orders of a Labor Arbiter cannot be declared final and executory upon the mere issuance thereof. A period of 10 days from receipt of any order is granted to either or to both

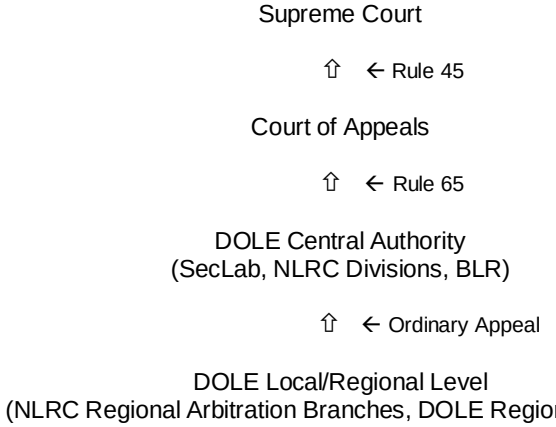
parties involved to appeal to the Commission proper. Failure to comply with the 10-day period is fatal to an appeal.

By virtue of the landmark ruling in *St. Martin Funeral Home v. NLRC* (1998), the Supreme Court required all appeals from the Commission proper to be coursed to the Court of Appeals through Rule 65 petitions for certiorari. By virtue of this ruling, decisions rendered by the DOLE Secretary or the BLR in the exercise of appellate jurisdiction are appealable to the Court of Appeals only through Rule 65 petitions for certiorari. From the Court of Appeals, the mode of appeal shall be Rule 45 petitions for review on certiorari to the Supreme Court.

D. Levels of Adjudication

Considering the *St. Martin Funeral Home* ruling, compulsory arbitration cases may flow from the regional level to the Supreme Court as follows:

FIGURE 3 – LEVELS OF ADJUDICATION



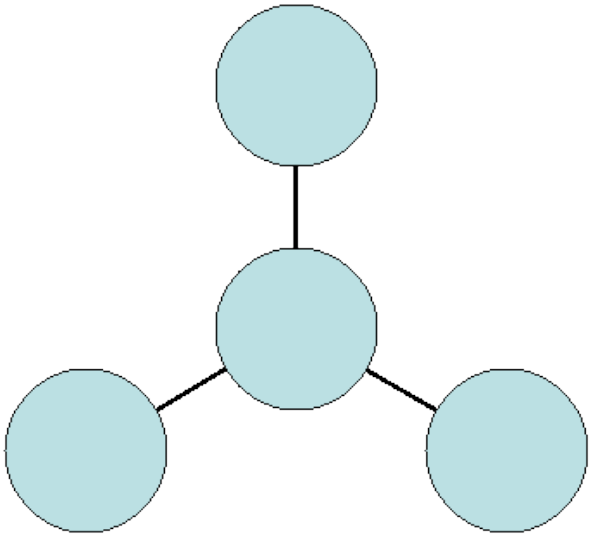
Periods of disposition vary from one agency to another, and depending upon the type of case involved. For instance, a petition for certification election may be disposed in a relatively expedient manner at the DOLE local/regional and central authority levels.

III. STRIKE/LOCKOUT INTERVENTION

In response to measures of last resort on the part of labor and management, strike or lockout interventions on the part of the DOLE in the

form of conciliation/mediation, voluntary or compulsory arbitration, and assumption of jurisdiction (AJ) are illustrated in Figure 4 as follows:

FIGURE 4 – FINAL LINE OF DEFENSE:
DOLE STRIKE/LOCKOUT INTERVENTION



With a right to strike "in accordance with law" pursuant to the 1987 Constitution, parameters surrounding industrial actions have been established under Articles 263 and 264 of the Labor Code. Under this framework, conciliation and mediation services shall be provided by the NCMB once a notice of strike or lockout is filed. A strike or lockout vote may be supervised by the NCMB, as "cooling-off" and "strike ban" periods are observed to allow conciliation and mediation to take its natural course.

Should conciliation and mediation efforts fail, the remedies of voluntary arbitration under Article 262 and the filing of a complaint for compulsory arbitration under Article 217 are available to allow the government machinery to adjudicate the dispute.

Under Article 263 (g), the DOLE Secretary may assume jurisdiction over a dispute in an industry indispensable to the national interest. In the

exercise of the AJ power, the Secretary may decide the dispute herself or certify the matter to the NLRC for adjudication.

In *Union of Filipro Employees v. Nestle Phils.* (1990), the Supreme Court ruled that parties must cease or desist from any and all acts that tend to undermine this authority, once such an assumption or certification order is issued. This assumption or certification order automatically results in a return-to-work for striking or locked-out workers. A strike undertaken despite the issuance of an assumption or certification order becomes a prohibited activity and thus illegal, pursuant to Article 264 of the Labor Code.

Finally, in *St. Scholastica's College v. Torres* (1992) the Supreme Court clarified that before the Secretary may take cognizance of an issue which is merely incidental to the labor dispute, the same must be involved in the labor dispute itself or otherwise submitted to him for resolution. This submission of an incidental issue to the Secretary of Labor and Employment is an instance where the latter may exercise concurrent jurisdiction with any DOLE compulsory arbitrator, such as the NLRC Labor Arbiter.

OUTLOOK: ALL UNDER OUR NOSES

"We have failed," the venerable Thomas Kochan lamented before an international gathering of members of the Industrial Relations Research Association (IIRA). Prof. Kochan referred to policy recommendations of industrial relations scholars in the United States that gave rise to "stillborn legislation".

Are we at the threshold of such negativity in the field of labor dispute settlement in the Philippines? Indeed, alarms have been sounded to amend Book V of the Labor Code. Perhaps in the numerical and physical order of provisions of dispute settlement in Book V, our system may seem confrontational and adversarial, ever harping on compulsory arbitration and industrial action options on the part of labor and management.

But let us give matters a second look. Beneath the fine print and tucked away in various portions of the Labor Code, we find a dispute settlement system that bears the hallmarks of non-adversarialism and softer approaches

pertaining to employee involvement and participation, workplace cooperation, collective bargaining, conciliation and mediation, grievance handling, and voluntary arbitration. There lies a system where compulsory arbitration is not the sole definitive solution; where strikes and lockouts are measures of last resort; and where there are genuine chances to liberate ourselves from a rigid sense of industrial confrontation and fundamentalism.

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[*] Executive Director, National Conciliation and Mediation Board (NCMB), Department of Labor and Employment (DOLE), Manila, Philippines. Prepared for the International Labor Organization (ILO) Subregional Office for South-East Asia and the Pacific Workshop on Conciliation and Mediation of Labor Disputes, 13-15 July 2005, Tagaytay City.

[1] HEM C. JAIN WITH GENEVIÈVE LALOUX JAIN, WORKER PARTICIPATION SUCCESS AND PROBLEMS 18-19 (1980).

[2] Jose C. Gatchalian, Labor Management Cooperation (LMC): Concept and Application, HANDBOOK ON LABOR MANAGEMENT COOPERATION (LMC FOR THE PHILIPPINE SETTING) 12 (1990).

[3] *Id.*

[4] C.A. AZUCENA, II THE LABOR CODE WITH COMMENTS AND CASES 321 (2004).

[5] San Miguel Corp. v. NLRC, G.R. No. 108001, 15 March 1996, 255 SCRA 133.

[6] AZUCENA, *supra* note 4, at 389.

[7] Oceanic Bic Division v. Romero, G.R. No. L-43890, 16 July 1984, 130 SCRA 392.

[8] Alcantara v. Court of Appeals, G.R. No. 143397, 6 August 2002, 386 SCRA 370.

[9] Mantrade/FMMC Division Employees and Workers Union v. Bacungan, No. L-48347, 30 September 1986, 144 SCRA 510.

[10] Continental Marble Corp. v. NLRC, No. L-43825, 9 May 1988, 161 SCRA 151.

[11] Sime Darby Pilipinas v. Magsalin, G.R. No. 90426, 15 December 1989, 180 SCRA 177.

[12] Ludo & Luym Corp. v. Saornido, G.R. No. 140960, 20 January 2003, 395 SCRA 451.

[13] NCMB PRIMER ON CONCILIATION AND MEDIATION.

[14] Luzon Development Bank v. Association of Luzon Development Bank Employees, G.R. No. 120319, 6 October 1995, 249 SCRA 162.