THE VA AS SUPER LABOR ARBITER

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ADR, shorthand for ***alternative dispute resolution***, is the new buzzword in settling legal problems which otherwise would have to be litigated through layers of adjudicative tribunals. Labor and management groups, of course, have been at the forefront of the process long before it gained currency, as well as respectability, among various sectors in the body politic as a preferred mode of resolving labor disputes. They know it as ***voluntary arbitration*** even if it is, in fact, a species of compulsory arbitration that is unmasked by its own definition.

For a better appreciation of what voluntary arbitration is all about, we may define it as a process mandated by the Labor Code to be embodied in every collective bargaining agreement which calls for the appointment of a voluntary arbitrator - or panel of voluntary arbitrators - in conciliating, mediating, and finally arbitrating a labor dispute which the employer and its union fail to settle under their existing grievance procedure. *(see Art. 12, Labor Code)* Its constitutional basis is laid down in *Article XIII, Section 3* which provides that "the State shall afford full protection to labor xxx and shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace. xxx" This state policy has, moreover, been amply reinforced through a number of international labor conventions to which we have acceded. *ILO Convention No. 151*, for example, requires that "the settlement of disputes shall be sought through negotiation between the parties, or through an independent and impartial machinery such as mediation, conciliation, and arbitration."

It is, therefore, a source of comfort that the Department of Labor and Employment (DOLE), under the able leadership of ***Secretary Arturo D. Brion***, has pursued this effort with much vigor. I am proud to have participated in the National Conciliation and Mediation Board (NCMB's) "retooling" workshops to upgrade the quality of voluntary arbitrators throughout the country, thereby promoting its widespread acceptance among various employer and employee groups across the nation as an effective alternative to conflicts and confrontations in reconciling their differences. The overwhelming success of the recently concluded ***6th National Convention on Labor Management Cooperation***, held in Iloilo City on November 28-29, this year is a testament to the commitment and dedication of the NCMB staff of ***Executive Director Reynaldo R. Ubaldo*** in the

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pursuit of this goal. No less laudable was the active and spirited participation of close to 500 labor and management representatives from the ***Philippine League of Labor-Management Cooperation Practitioners*** (PHILAMCOP), led by its acting President, ***Nestor Z. Flores***, who, fittingly enough, were also celebrating the 10th anniversary of their organization. Despite the alarm and threats posed by an attempted *coup d'etat* in Manila and two typhoons converging in the Visayas, the convention proceeded without a hitch, thanks to the persistent and untiring efforts of the following NCMB officials, aside from Executive Director Ubaldo : ***Director Ma. Elena M. Hernandez*** of Technical Services, ***OIC Teresita E. Audea*** of the Voluntary Arbitration Division, ***OIC Ma. Yolanda P. Minoria*** of the Workplace Relations Division, and ***Regional Director Isidro Cepeda***, as well as the indefatigable members of their teams, namely, ***Olive Macawili, Gigi Regamit, Catherine Alcantara, Tess Kinsy Fulay, Venus Iturralde***, and ***Melinda Lee***. Virtually all of the participants in the convention were one in expressing their admiration and gratitude to these officials as well as the speakers and resource persons who helped ensure that the convention was worth every peso that was expended on it.

Laws on Arbitration

By way of background, it is useful to know that there are actually four major pieces of legislation, including the Labor Code provisions on voluntary arbitration, that are currently on our statute books. The other three are :

1. ***Republic Act 876*** – otherwise known as the Arbitration Law. It was enacted way back in 1953 but is still good law. It is designed to abort litigation by urging the parties to sit down together and endeavor to settle the existing controversy between them.

2. ***Executive Order 1008*** - created the Construction Industry Arbitration Commission. Its principal purpose is to prevail on the parties to forego expensive litigation between and among contractors and their clients given the fact that the subject of their disagreement is basically based on contract which is usually highly technical in nature.

3. ***Republic Act 9285*** – the Alternative Dispute Resolution Act of 2004. It is this law which expressly declares that it is "the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes." Its underlying objective

is to promote the use of ADR as "an important means to achieve speedy and impartial justice and declog court dockets."

Interestingly, all these laws expressly provide that they do *not* apply to the settlement of industrial disputes or issues arising under the Labor Code, thus leaving this matter cognizable only by the National Labor Relations Commission (NLRC) and Voluntary Arbitrators.

Advantages of Voluntary Arbitration

The first obvious advantage, of course, is that the employer and the union are entirely free to select and agree on their own "judge." Naturally, it behooves both parties to choose a competent, trained and impartial third person who shall sit in judgment concerning the merits of the case and whose decision is, ideally, final and executory. They do not have to specifically name him in their CBA but may have a different "judge" for each controversy, depending on the nature of the dispute and its need for a more technical or specialized calling. The matter of who is to arbitrate your dispute is not left to chance or some mysterious raffling procedure in the NLRC or Bureau of Labor Relations (BLR).

Secondly, the resolution of your dispute will be more expeditious given that there are specified timeframes under the rules and NCMB guidelines within which to wind up proceedings. The procedural pace is entirely left to the sound discretion and the agreement of the parties, with the concurrence of the Voluntary Arbitrator. Moreover, the rules of evidence are not entirely controlling and may be relaxed thus allowing both employer and the union, under the guidance of the Voluntary Arbitrator, to adopt acceptable methods of adducing proof without getting bogged down by procedural technicalities.

Thirdly, the proceedings can be conducted at much less cost since neither party is compelled to engage the services of pricey lawyers to argue their respective sides. The proceedings can be conducted within company premises, or elsewhere as may be agreed upon.

And fourthly, the resolution of the dispute can be based on a creative and proactive process that is not hampered by extraneous influences or traditional means of putting an end to a controversy that will not result in serious or lasting enmity between the employer and its employees as represented by their union.

Clearly, these advantages of resolving labor disputes should be evident to anyone who values harmonious labor-management relationships and the promotion of industrial peace within the organization.

Jurisdiction of the Voluntary Arbitrator

The jurisdiction of the Voluntary Arbitrator is *original* and *exclusive* in the following areas:

A. All unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement, or CBA;

B. All unresolved grievances arising from the implementation or enforcement of company personnel policies;

C. All wage distortion issues arising from the application of any wage orders in organized establishments;

D. All unresolved grievances arising from the interpretation and implementation of the productivity incentive programs under Republic Act 6971.

"Original and exclusive," briefly put, means that he cannot be divested of his right and authority to hear and decide grievances falling under any of the above areas once he has been properly chosen by both parties. It is important to keep this in mind because a Labor Arbiter is duty-bound to dismiss these cases if filed by the union before him. He is required to refer or remand such cases to the process of voluntary arbitration.

On the other hand, his jurisdiction is merely *concurrent* in the following cases:

A. Unfair labor practices;

B. Deadlocks in collective bargaining; and

C. All other labor disputes.

It is to be emphasized that the above disputes are not - strictly speaking – grievances, and it is the Labor Arbiter who has the original jurisdiction to hear and decide all such cases. It is only when the parties agree among themselves to refer such matters to a Voluntary Arbitrator that he can take lawful cognizance of them.

Labor-Management Cooperation Councils

As I took pains to emphasize in my lecture to the participants in the aforementioned NCMB-PHILAMCOP national convention in Iloilo, it is

unfortunate that only organized establishments with existing CBAs are covered by the law mandating voluntary arbitration in the resolution of their labor disputes. Considering that only around 15 percent of all enterprises in the Philippines are *organized*, meaning that their employees are represented by a union, the potential is huge indeed for the institutionalization of voluntary arbitration as the preferred mode of resolving labor disputes. In practical terms, this means that these *unorganized* companies or enterprises must litigate the grievances of their employees through the NLRC or the courts. There is therefore a felt need to encourage the formation or establishment of labor-management cooperation councils among unorganized or non-unionized firms through which problems in employer-employee relationships can be successfully smoothed out, and their grievances -whether actual or imagined - attended with authority and dispatch. These LMCCs can agree on a voluntary arbitration mechanism to thresh out their differences without going through the expensive and time-consuming process of litigation through the NLRC or the courts. Even if they are not bound by the Labor Code provisions on voluntary arbitration, they can make use of the Arbitration Law, that is, RA 876 to formalize their agreement. There is nothing to prevent them from legally adopting the voluntary arbitration provisions of the Labor Code to govern the arrangement thus forged under the regime of the old Arbitration Law.

Super Labor Arbiter

Under the law and current guidelines, it will appear that the Voluntary Arbitrator is endowed with vastly expanded powers and jurisdiction than the NLRC and its horde of Labor Arbiters. The Voluntary Arbitrator does not even have to be a lawyer. Not only can Voluntary Arbitrators assume jurisdiction over all cases referred to them by the parties even if such cases fall under the original or exclusive jurisdiction of Labor Arbiters (or the Bureau of Labor Relations for that matter), but they can also formulate their own rules of procedure and not be bound by the technical rules of evidence. Once he assumes jurisdiction over a case, he effectively excludes any other adjudicative body. The grievances that are subject to his "original and exclusive" jurisdiction may further be expanded to cover *all* labor disputes, including unfair labor practices and deadlocks in CBA negotiations. All that is required is for the parties involved to agree to submit their dispute to voluntary arbitration. This has the effect of divesting the Labor Arbiter, or the NLRC of its jurisdiction to hear and decide the case. A Voluntary Arbitrator's decision or award is final and executory after ten days, and is not to be stayed by a Motion for Reconsideration which is deemed to be a "prohibited pleading" under the Guidelines. Even more telling, his decision can only be appealed to the Court of Appeals bypassing the NLRC altogether. Note that his award or decision enjoys the presumption that it was made and released in due course of arbitration, and the Court of Appeals can only confirm or vacate the

decision, and in no case substitute its own judgment for that of the Voluntary Arbitrator. The losing party is also precluded from filing an appeal or a petition for certiorari questioning the merits of an arbitral award. Furthermore, the Voluntary Arbitrator can be called upon to settle a labor dispute at any stage of the proceedings even if such labor dispute is already pending decision - even at the level of the Court of Appeals !

Concluding Notes

There is still a lot to be done to move voluntary arbitration forward and truly make it the preferred and acceptable mode of ADR. It is disappointing that, to date, only a total of 3,240 cases have been decided since 1988. In spite of heroic efforts on the part of the National Conciliation and Mediation Board and its highly competent and dedicated officials and staff, voluntary arbitration has not taken off as its proponents and supporters might have expected. It appears that there is a dearth of competent and knowledgeable Accredited Voluntary Arbitrators, and both labor and management may still be wary of the quality of decisions and awards churned out by them. But based on the statistics compiled by the NCMB, the Court of Appeals has affirmed more than 80 percent of the decisions and awards elevated to it for review. Clearly, there is a need for the DOLE to exert a more determined campaign to raise the awareness and potential of voluntary arbitration as an efficient and effective method of resolving labor disputes between labor and management. The recent initiative to designate DOLE regional directors and assistant regional directors as *ex-officio* Voluntary Arbitrators, however, may not be a timely or an adequate response. What is probably more urgent is to strengthen the NCMB and enlist and educate various employer and labor organizations to get on the VA bandwagon and sing its praises for all and sundry to hear and listen.

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