(DRAFT ONLY: NOT FOR QUOTATION)

LABOR MARKET AND INDUSTRIAL RELATIONS ENVIRONMENTS: FOCUS ON POLICY ISSUES CONCERNS AND OPTIONS IN A GLOBALIZED ECONOMY[*]

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1. Introduction

The advent of globalization in the Philippines has suddenly forced employers to reorient its operations to stay competitive: and that is to address the new system of doing business. Globalization has brought about stiff competition with the free flow of goods in the domestic market. It has also forced employers to reorient their operations towards the international market rather than stay solely dependent – as they used to be – on the domestic market for their revenues.

Globalization, from the academic point of view, can be defined by looking either at the process or the substance. From the point of view of process, "globalization" would mean the rapid integration of domestic economies to a global economy. As substance it would mean the attainment of free flow of trade, goods, services and investments from one country to another. In other words it seeks to achieve a global or borderless economy, which on account of the advancement in communication, transportation and computer technologies has now become a distinct possibility.

Globalization along with the concomitant re-engineering of business operations have affected the living standards of many workers especially those in the formal sector of the economy whose employment has traditionally been protected by law and by trade unions. Many of the cherished concepts such as security of tenure, protection to workers, etc. have turned into rigidities hampering the efforts of employers to achieve competitiveness as required by a global economy – as well as to provide employment to Filipino workers.

Trade unions which used to be looked upon as knights in shining armor and protectors of employment of the less fortunate suddenly found their role reversed in society and in business in general: to that of an anathema to a global economy. They have increasingly been condemned, unfairly I submit, to have caused all the rigidities that have become problematic to employers' efforts to keep their companies afloat and to provide employment. It has increasingly become a popular punch line for employers to argue "that standard is useless for those who are unemployed."

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The workers on the other hand, point to the employer as the alleged culprit of the increasing adverse conditions that they are now experiencing. They accuse employers' activities such as re-engineering of operations and the implementation of flexible employment relations as anti-labor and anti-union. This, I submit, is also unfair because employers in this country have simply been forced to such activities as a consequence of a global economy.

But is this finger pointing really necessary? Isn't there a way by which we can address these changes without being perceived as anti-labor or anti-union? As both workers and employers in this country are affected adversely by this global phenomenon, should they continue looking at each other as adversaries? Or can they work together as a team for the sake of economic development of the country? For in the end, both workers and employers will be the direct beneficiaries of economic development.

These are some of the issues that have been bothering us for the past decades since the implementation of structural adjustment in 1987.

2. The Philippine Economic Development Strategy and the Labor Code

When we discuss labor market and industrial relations environments at the policy level, we cannot ignore the Labor Code as this law is the main source of labor policies in our country. Apart from being a social legislation aimed at protecting the workers and improving their standard of living, the Labor Code is also an instrument of economic development. As then Secretary Blas F. Ople puts it, "while the Labor Code is a charter of human rights and obligation,"[1] "it must also be both responsive and responsible for development for a nation must develop together or not at all."[2]

The generally accepted concept of economic development involves two (2) phases. The first focuses on increasing the economic pie and the second on how such increase in economic pie can be equitably distributed. Under the economic regime of import substitution, the Labor Code was in harmony with both these objectives. It helped enlarged the economic pie by creating demands in the domestic market that was necessary to support import-substituting industries. It also addressed the second activity under the banner of "social justice."[3]

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[1] *Ople, B. F. (1979) "Social Conscience of the World" in **Frontiers of Labor and Social Policy**, Ministry of Labor and Employment, Institute of Labor and Manpower Studies, Manila, Philippines, p. 43.*

[2] *Ibid., p. 219.*

[3] *The concept of social justice is vague and contentious. Former President Ramon Magsaysay defined "social justice" as one where "he who has less in life should have more in law." The Supreme Court of the Philippines in the case of Calalang v. Williams, 70 Phil. 726 defined "social justice" as the humanization of laws and equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the government of measures calculated to ensure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally through the exercise of powers underlying the existence of all*

In short, during the import substitution economic regime, the thrust was to improve the standard of living of the workers that in turn was expected to improve their purchasing ability. This was necessary to create demands in the domestic market on which our industries then were dependent for their revenue.

The other important aspect during the import substitution regime was that the Labor Code was the instrument that created labor administration system in the country. A system of labor administration was necessary to stabilize employer-employee relations so our import-substituting industries could move forward.

Labor administration system is generally perceived as a subsystem of the larger economic system. As a subsystem, labor administration must be attuned to the larger economic system. During the import substitution regime, the labor administration system that was created by the Labor Code complimented the objectives of the then existing economic regime.

Like any man made structure, the labor administration as we have it now is not a perfect system. It has been flawed, in fact, from the very beginning. But we chose to ignore those faults to give the system a chance to work.

Many of the provisions of the Labor Code were copied from labor laws of developed countries mostly from the United States of America. The framer of the Code at that time ignored the fact that in those developed countries, most of their workers were already in the formal sector of the economy; whereas in the Philippines, a large majority of our workers were still with the informal sector. As a consequence we have a Labor Law that focused on protecting the smaller segment of the workforce in the formal sector. Nonetheless, we consoled ourselves with the thought that as "economic development deepens, most of our workers will eventually end up with the formal sector of our economy," an assumption that now appears premature as this was reversed when globalization was introduced.

The employment relation as prescribed by the Code is summarized in Figure 1. Note that it centers on the regular employees as the defining element of employment relations. All other types of employment relations are perceived as atypical arrangements. They do not form part of the employment relations in a typical business or enterprise.

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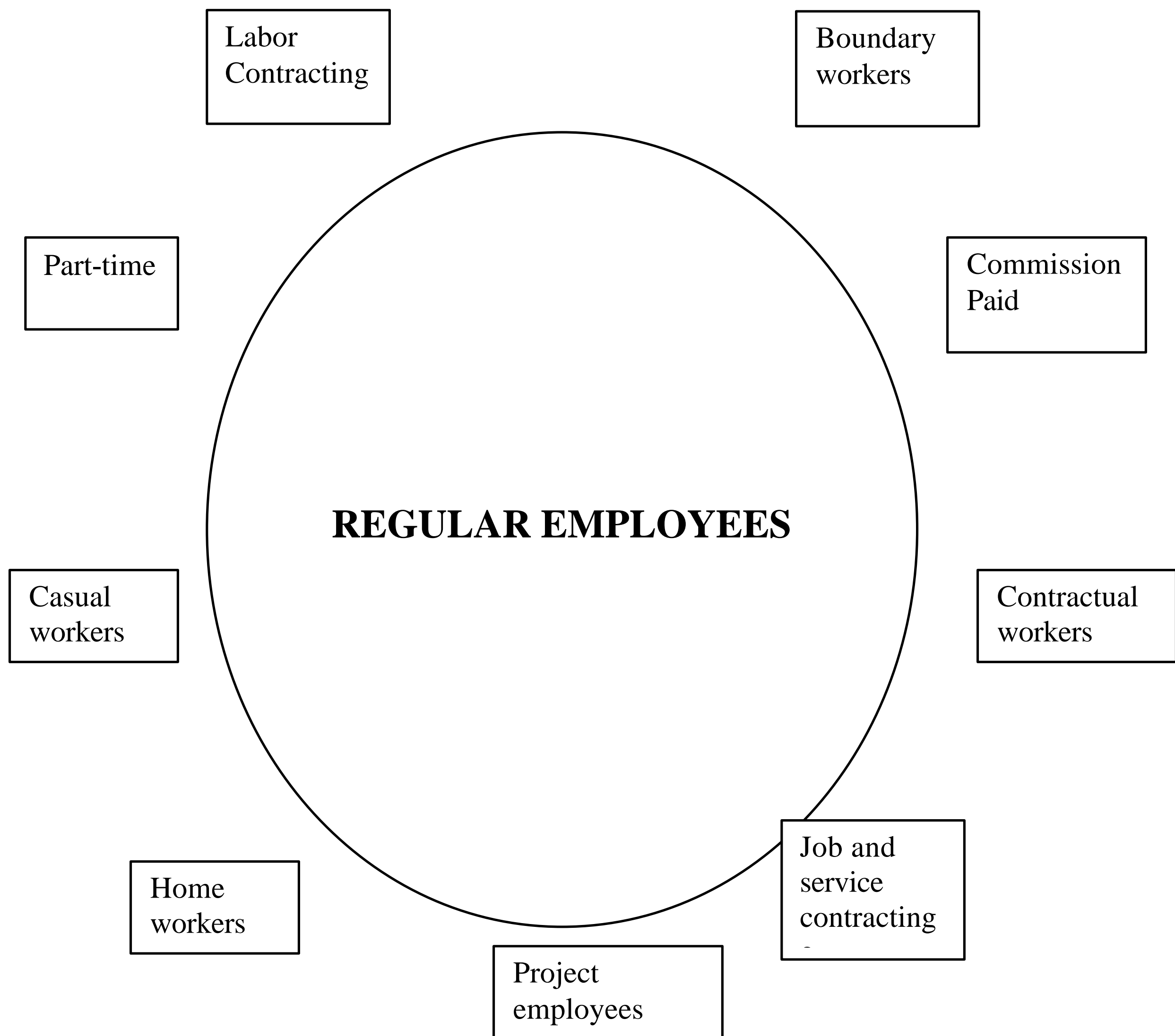
governments on the time-honored principle of salus populi est suprema lex. For the international debate on the meaning of "social justice' see for example Boucher, D. and P. Kelly (eds.) (1998) ***Social Justice from Humes to Waltzer,*** *Routledge, London.*

FIGURE 1. EMPLOYMENT RELATIONS UNDER THE LABOR CODE[4]



3. Global Economy and the Philippine Labor Code

As intimated above, there has been a paradigm shift in the larger economic system. This shift was from import substitution to export-led or global economy. The problem is that the Labor Code that established a labor administration system - a subsystem of the larger economic system – has not responded to this change in paradigm.

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[4] *This figure was originally presented to ILO in the paper entitled* ***The Philippines: The Labor Code and the Unprotected Workers.*** *See also Macaraya, B. (1999) "The Labor Code and the Unprotected Workers,"* ***Proceedings of the Philippine Industrial Relations Society National Conference****, Diliman, Quezon City, Philippines.*

We need not discuss in the detail the instrument and process used in achieving a paradigm shift in our economic system.

It all began in 1987 when structural adjustments[5] were introduced aimed at reorienting the economy from import substitution to export led. Several policy instruments were introduced aimed at forcing domestic industries to move from domestic market revenue-dependent to the international market.

The most telling among these policy reforms was the lowering of tariff and other protective measures. This facilitated the entry of foreign made goods in the domestic market that in turn caused stiff competition. Because of the heightened competition domestic industries were forced to export and to implement reforms to make their operations efficient.

Among the many reforms implemented by domestic corporations to meet the challenge of competition was to re-engineer their operations.[6] Initially, such re-engineering resulted to massive lay-offs of workers particularly in the protected industries where trade unions presence was strong. Others who could no longer compete were forced to close operations.

This was followed by the re-orientation of the labor process by identifying the core and the non-core activities. The non-core activities were being sourced out either to independent contractors or to labor cooperatives.

Finally, there was the international subcontracting that was introduced largely by multi-national corporations. Examples of these are the call centers and other activities that have been passed on to the third world countries were labor is much cheaper.

The net impact of all these phenomena was that they forced a change in employment relations even without amending the Labor Code. Employers were forced to practice atypical employment relations to survive and be able to continue providing employment to the Filipino workers. Figure 2 shows the new employment relation that was forced upon us by globalization. As shown below, the modern employer-employee relations already include atypical employment relations as part of employers' regular work force. In other word arrangements that were previously known as atypical employment have now become typical employment relations. Today it will be hard to find a corporation or business that does not have employment relation other than regular employment.

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[5] *For discussions on structural adjustments see for example Standing, G. (1991)* ***Structural Adjustments,*** *International Labor Office, Geneva, Switzerland. For the Philippine experience see for example Macaraya, B. and R. Ofreneo (1993) "Structural Adjustments and Industrial Relations: The Philippine Experience,"* ***Philippine Labor Review,*** *vol. 16, No. 1, pp. 26-86.*

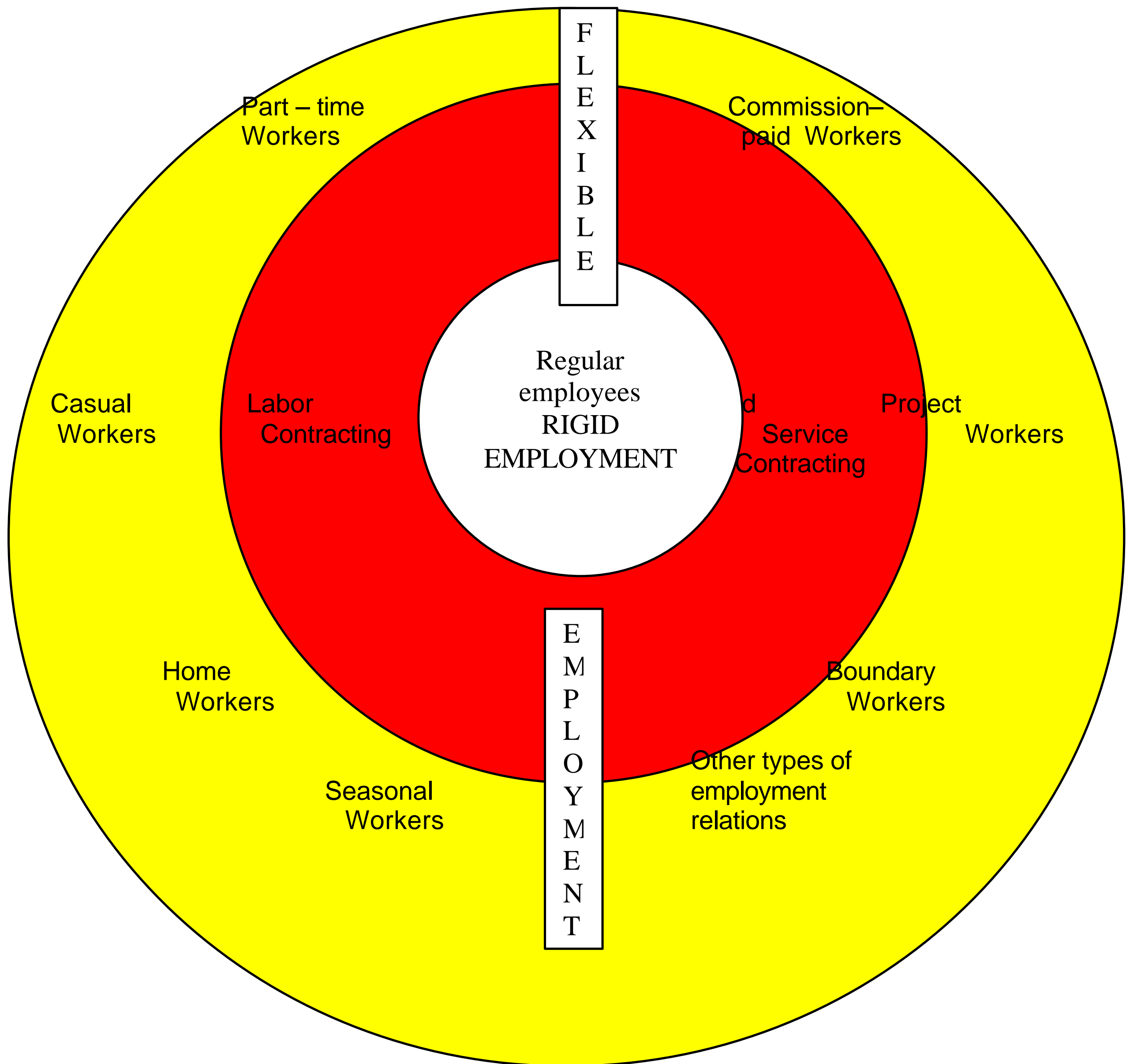
[6] *For more on the impact of structural adjustments to employment relations see for example Dey, I. (1989) "Flexible Parts' and 'Rigid Fulls': The Limited Revolution in Work Time Patterns,"* ***Work, Employment and Society,*** *vol. 3, pp. 465-490; Smith, C. (1989) "Flexible Specialization, Automation and Mass Production,"* ***Work, Employment and Society****, vol. 3, pp. 203-220.*

The said employment relations are not confined solely to domestic industries. Multinational corporations also employ them under the banner of international outsourcing. Thus, it is possible that some activities of these corporations are outsourced to another country and those workers under what we originally know as atypical employment may be physically located in other countries. In one case, a world famous garment company outsourced its products to the Philippines with the former not even bothering to open an office in our country.

Having laid down the basic changes in employment and industrial relations environments brought about by the shift in economic paradigm from import substitution to export-led, we are now ready to discuss the various policy issues on labor administration.

Let me begin with a confession that given the time constraint we will not be able to discuss all the policy issues on labor administration related to the shift in economic paradigm.

FIGURE 2. THE NEW EMPLOYMENT RELATIONS IN THE PHILIPPINES



4. Analyzing public policies

Examining and analyzing public policies, the following questions serving as parameters can be used: a) how effective are they? b) how relevant are they? and c) how efficiently are they implemented?[7] Good public policies must positively answer all these three (3) issues. Public policies must be effective, relevant and efficient.

a) Effectiveness – a public policy must be effective in carrying out its purposes and objectives. Effectiveness largely refers to efficacy or the level of success that could be achieved by such public policy. This is directly related to its purposes or objectives. It must be broad and at the same time sufficiently comprehensive to insure success.

b) Relevance - a public policy must also be timely and significant. It must address present situation and must be broad enough to cover future similar situation. A public policy should essentially be dynamic, not static. And it must be capable of adjusting to changing situations and developments. A public policy that could no longer address such situations must be adjusted, updated or discarded as they may have already become archaic.

c) Efficiency – Lastly, a public policy must also be efficient. Efficiency broadly refers to the financial aspect of such public policy. This is essentially a cost and benefit analysis. It is also directly related to good organization that will carry out the mandate of such public policy.

5. Policy issues, concerns and options

5.1. The issue of effectiveness of the Labor Code

The most fundamental issue concerns the effectiveness of the Labor Code. The mandates of the Code are to protect the workers and to improve their standard of living. To insure effectiveness in pursuing its mandates, the Code must cover majority of the Filipino workers.

An examination of the various provisions of the Code will show that its coverage is limited to the workers in the formal sector who unfortunately comprise a small segment of the total workforce. Table 1 shows the comparative number of workers employed in the formal and informal sectors of the Philippine economy for the years 1999 and 2003 respectively.

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[7] *See for example Dunn, V. (1981)* ***Public Policy Analysis****, Apprentice Hall, New Jersey, U.S.A.*

COMPARATIVE SIZES OF FORMAL AND INFORMAL SECTORS 1999 and 2003[a]

	1999		2003		Difference
	No. of workers	% to total employed	No. of workers	% of total employed	
Labor Force	30,758,000	90.19 (9.8)[b]	34,571,000	88.61(11.4)[b]	**+3,813,100**
Total employed	27,742,000		30,635,000		**+2893,000**
Formal sector	6,013,688	21.68	5,706,460	18.62	**-307,228**
Informal sector	18,069,322	65.13	20,013,540	65.32	**+1,944,218**
Wage & salary	3,932,312	14.17	4,868,540	15.89	
Self employed	8,864,000	31.95	9,912,000	32.35	
Domestic helpers	1,498,000	5.40	1,486,000	4.85	
Unpaid workers	3,775,000	13.61	3,765,000	12.28	

Source: Leogardo, V. J. (2004) "Addressing the Roots of Decent Work Deficits: Issues and Priorities," A paper presented during the 2nd High-Level National Policy Dialogue on the Social Dimension of Globalization, ILO Auditorium, ILO Manila, 2 December 2004
[a]Determined through residual methodology, using NSO Labor Force Surveys and Annual Survey of Philippine Business & Industry
[b]Percent unemployed

The number of workers employed in the formal sector of the economy and is therefore covered by the Code for the period 1999 and 2003 comprise only 21.68 percent and 18.63 percent, respectively, of the total workforce. Also, for the same period the number of workers in the formal sector declined by 307,228. And the number of workers in the formal sector appears to continuously decline as globalization deepens.

On the other side, the number of workers in the informal sector for the same period comprises 65.13 percent and 65.32 percent, respectively. From 1999 to 2003, the workers in the informal sector grew to 1,944,213. And these are the workers, to repeat, that are not covered by the Code.

a) The policy issues

Given that only roughly about 18 to 21 percent of our total workforce are in the formal sector of the economy and are, therefore, covered by the Code, the policy issue is can the Code effectively carry out its mandate. With such a small coverage how can the Code protect and improve the standard of living of the Filipino workers?

b) Policy Options

The first option, I surmise is, is to repeal the Labor Code all together as suggested by former Secretary Gerry Sicat, as it has not protected, much less created, employment. He argued that the Code today has in fact become a deterrent in our efforts to attract foreign investors since they allegedly find our labor administration system too rigid. I do not wish to engage in a debate with such a prominent economist as our former Secretary Gerry Sicat. But certain issues related to his argument must be raised. Will repealing the Labor Code improve our efforts to attract foreign investors? Will foreign investors be willing to invest in a country without any kind of labor administration? Will they be willing to gamble and leave employment relations to the vagaries of employment market?

There are also political and practical issues that we have to resolve if we opt to repeal the Labor Code. Being a democratic country observing the rule of the majority, will this option be politically acceptable to the Filipino workers who constitute majority of our populace? Will our political leadership agree with this proposal knowing that it will be committing political suicide? These are some of the practical considerations to contend with when we discuss and assess public policy.

On the economic side, will repealing the Labor Code be advantageous to our local capitalist class? Will they be able to compete with large multinational corporations in availing of Filipino skills in the Philippines? I submit that given these serious policy implications the proposal to repeal the Labor Code cannot be an option.

The only policy option, I submit, is to make the Code effective by expanding its coverage. And this will be discussed in detail below.

5.2. The Relevance of the Philippine Labor Code in a Global Economy

We now move to the issue of relevance of the Labor Code given the shift in our economic paradigm. In discussing its relevance, we have to go into the various policy issues beginning with the most basic of them, i.e., employment relations.

5.2.1.1. Employment relations

a) Policy issues

As a defining element of employment relations, the Labor Code remained biased in favor of the concept of regular employment at the expense of other type of employment relations. Article 280 of the Code provides that “the provisions of written agreement to the contrary notwithstanding, and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually

necessary or desirable in the usual business or trade of the employer."[8] Two (2) important policy issues could immediately be drawn out of this provision.

First, the definition of regular employees. As so provided by law, a regular employee is one performing **activities usually necessary and desirable to the operations of an employer.** With this definition, is there an activity that could be outsourced without the employer running the risk of such contracted workers being declared as regular employee? Is janitorial services not necessary and desirable and therefore should not be outsourced? Who among us here would not like a clean working atmosphere? This provision of law puts the exercise of such business arrangement as outsourcing at the mercy of the court which can declare those contracted workers as regular employees.

And secondly, and perhaps more important, this provision of law limits the coverage of the Code to workers classified as regular employees. Because it has condemned other forms of employment relations as not in accordance with law, the Code closes the avenue to regulate, protect and improve the standard of living of the larger Filipino workforce.

b) Policy Options

As suggested above, repealing the Labor Code cannot be a policy option because of its adverse political and economic consequences to the nation. The only policy option left is to make the Code relevant. For the Code to be relevant it must cover majority of the Filipino workers. The issue therefore is how to expand the coverage of the Code.

The key to expand the coverage of the Labor Code is to recognize and legitimize other types of employment relations. By recognizing such types of employment relations, the Code can now supervise and regulate them. And this reform is necessary since atypical employment relations have now become a typical feature of employment relations as a consequence of globalization.

In more practical terms you may wish to consider shifting your conceptual paradigm from the present concept of regular employees to the concept of financially dependent employees as a yardstick in determining employment relations. Thus, we may define employment relations as follows:

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[8] *The full text of Article 280 reads:*

Article 280. Regular and Casual Employment. – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed regular where an employee has been engaged to perform activities usually necessary and desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of engagement of the employees or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one-year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

Employment relations shall include the following: a) employees with indefinite term; b) employees with definite term; c) project employees; d) seasonal employees; e) those paid by result; f) those paid by commission; and g) other employees who are financially dependent on an employer.

The reform, as you will notice, is simply putting into law the current practices in labor administration forced upon us by globalization. We are simply responding to the changes in employment relations in a global economy.

5.2.2. **Security of tenure**

a) Policy issue

Another issue that you may wish to consider concerns the concept of security of tenure in Article 279.[9] The law provides that a regular employee may not be dismissed except for cause or when authorized by law.

For a better understanding of the policy issue involved, let us look at the history of security of tenure.

The concept of security of tenure originated from the public sector as conceptualized under the 1935 Philippine Constitution. Our forebears deemed this concept necessary to insure continuity of public service even when there is regular change in political leadership as an aftermath of an election. But when the Code was promulgated and this provision was adopted, it was made applicable to workers employed in the private sector.

During the Martial Law Regime, security of tenure was used to get the support of the workers and their unions for the regime. In fact, at that time dismissing workers was made more stringent when then President Ferdinand Marcos required employers to first secure clearance from the Government before they could dismiss a worker, and more so when dismissing an officer of a union. I could recall that there was a parallel General Order requiring military and police officers to get a clearance from the Secretary of Labor before they could arrest labor leaders.

This requirement of law is often cited as the most constraining for an employer to effectively manage his operations. It has been pointed out that this provision deters our efforts to attract foreign investor to the country.

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[9] *The full text of Article 279 reads:*

Article 279. Security of tenure. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

The question often asked in this regard is this: Is it fair to employers that the Government will usurp its prerogative to dismiss a worker for whatever reason? What investment or exposure does Government have in business that should entitle it to have the last say in the dismissal of workers? Is this not a violation of the right to contract? Is it not a truism as affirmed by our Courts that he who has the power to appoint also has the corresponding power to dismiss?

b) Policy options

There are two policy options that you may wish to consider concerning security of tenure.

The first option is to go back to our original system of termination pay. This concept of termination pay reinforces the authority of the employer to manage the corporation and to discipline its workers. On the part of the workers, he is given separation pay to tide him over while looking for a new job.

The second option is related to our proposal to change the concept of employment relations. If you opt to retain the practice of providing security of tenure because you feel it is necessary to stabilize your operations, then, it may be observed subject to the type of employment relations under which a particular worker was hired. For instance employees with a definite term may not be dismissed except for cause during the term of their contract. A project employee may not be dismissed except for cause during the existence of the project or the portion of the project for which he was hired, and in the case of seasonal employees, during the season they were employed. But after the term or project is completed his employment may no longer be renewed.

5.2.3. Minimum wage fixing

a) Policy issues

Another policy area that you may wish to discuss is minimum wage fixing. It has been argued that the minimum wage fixing has resulted to artificially high wage rates in the Philippine that discourages foreign investors.

Let me begin by saying that the Labor Code did not establish the minimum wage rates. The Code simply established the machinery mandated to fix the minimum wage rates. In Article 120, the National Wages and Productivity Commission was created to determine the minimum wage rates based on regional setting.[10] Below the National Wages and Productivity Commission are

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[10] *The provisions of Article 120 reads:*

Article 120. Creation of National Wages and Productivity Commission. –There is hereby created a National Wages and Productivity Commission, hereinafter referred to as the Commission, which shall be attached to the Department of Labor and Employment (DOLE) for policy and program coordination.

Regional Tripartite Wage and Productivity Boards that are tasked to determine the minimum wage rate in the regions.[11]

Several policy issues could be drawn out of the minimum wage fixing both in terms of substance and in terms of the process used to determine the minimum wage rates.

First, the broad issue: whether there is really a need to prescribe minimum wage rates which, take note, concern only the workers in the formal sector particularly the waged and salaried.

As shown in Table 1, only 14.17 percent and 15.89 percent of the total workers are classified as wage and salaried for the years 1999 and 2003 respectively. Given the small portion of the workforce classified as wage and

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[11] *Article 122 reads as follows:*

Article 122. Creation of Regional Tripartite Wages and Productivity Boards. – There is hereby created Regional Tripartite Wages and Productivity Boards, hereinafter referred to as Regional Boards, in all regions, including the autonomous regions as may be established under the law. The Commission shall determine the offices/headquarters of the respective Regional Boards.

The Regional Boards shall have the following powers and functions in their respective territorial jurisdiction:

(a) To develop plans, programs and projects relative to wages, income and productivity improvement for their respective regions;
(b) To determine and fix minimum wage rates applicable in their region, provinces or industries therein and to issue the corresponding wage orders, subject to guidelines issued by the Commission;
(c) To undertake studies, researches, and surveys necessary for the attainment of their functions, objectives and programs, and to collect and compile data on wages, incomes and productivity and other related information and periodically disseminate the same;
(d) To coordinate with the other Regional Boards as may be necessary to attain the policy a intention of this Code;
(e) To receive, process and act on applications for exemption from prescribed wage rates as may be provided by law or any Wage Order; and
(f) To exercise such other powers and functions as may be necessary to carry out their mandate under the Code.

Implementation of the plans, programs and projects of the Regional Boards referred to in the second paragraph, letter (a) of this Article, shall be through the respective regional offices of the Department of Labor and Employment within their territorial jurisdiction; Provided, however, That the Regional Boards shall have technical supervision over the regional office of the Department of Labor and Employment with respect to the implementation of said plans, programs and projects.

Each Regional Board shall be composed of the Regional Director of the Department of Labor and Employment as chairman, the Regional Directors of the National Economic and Development Authority and the Department of Trade and Industry as vice-chairmen and two (2) members each from workers and employer sectors who shall be appointed by the President of the Philippines, upon the recommendation of the Secretary of Labor and Employment, to be made on the basis of the list of nominees submitted by the workers and employers sectors, respectively, and who shall serve for a term of five (5) years.

Each Regional Board to be headed by its chairman shall be assisted by a Secretariat.

salaried earners, what beneficial impact would the minimum wage rates have in improving the standard of living of the Filipino workers in general?

On the contrary, because the wage and salaried workers are located in the most productive sector of the economy that produces essential goods such as canned foods, milk, clothing, medicine, etc. the increase in minimum wage rates will lead to an increase in the prices of these essential consumer goods often to the detriment of the larger non-wage and salaries workers.

A parallel issue is also being asked in the academe: Why is it that in the Philippines with a long history of minimum wage fixing, our workers are among the lowest paid in South East Asia as compared for instance to Singapore that has the reverse system of fixing the ceiling wage? Is government intervention through the minimum wage fixing the key to improving the workers' standard of living? Or should we leave wage determination to the vagaries of the market?

The second important issue concerns the concept of minimum wages and the process of determination.

The original concept of minimum wage is that it is a rate calculated to keep together both body and soul of the workers. It is essentially an economic estimation calculated to protect the health and welfare of a worker.

If this is the basis for estimating the minimum wage rates, then the Philippines should have only one minimum wage rate. And this is because it is difficult to argue that the amount needed to keep a worker in Sulo alive is substantially less than that needed to keep a worker in Manila alive.

In the Philippines, we determine minimum wage by region (on the assumption that each region has a different standard of living). On occasions like traveling abroad, and being asked by probable investors such a simple question like how much the minimum wage in the Philippines is, not one of us here – who are supposedly labor exports – could immediately respond. And should we attempt to explain to the probable investor how we set our minimum wage, he would probably end up confused. He might even get discouraged and change his plan of investing in the country.

Today, our concept of minimum wage is no longer one that will keep the body and soul of the workers together. What is now considered as minimum wage rate is the entry rate of most, if not all, Philippine employers. And this could be attributed to the system of fixing the minimum wage as prescribed by the Code.

Minimum wage fixing is no longer a purely economic determination. It is a process that has been transformed into a political-economic determination. The determination is no longer how much is necessary to keep the body and soul of the workers together, but rather, what is acceptable to the social partners in the region. It has, in fact, become a regional extension of enterprise wage bargaining.

Also minimum wage fixing has a negative impact on our efforts to strengthen collective bargaining. Our trade unions have increasingly become dependent on minimum wage setting in their effort to improve the wages of their members. Essentially the argument is: Since minimum wage constitutes the hiring rate of most, if not all, enterprises in the Philippines, increasing the same will necessarily justify their (unions) demand for higher rates of pay, an escalation effect, on the upper wage rates.

b) Policy options

Several options could be drawn out of the above discussion.

The first option, which is on the macro level, is whether we should continue having minimum wage fixing or simply leave wage determination to the market. As pointed above, in Singapore where they have wage ceiling rates, their workers are better paid than our workers in the Philippines. And this is despite our long history of having a minimum wage fixing system.

The other option is to go back to the old concept of minimum wage determination, i.e., purely economic rather than political-economic determination. In other words this should be a purely government determination and not a subject of collective bargaining among the social partners in the region.

5.2.4. On the freedom of association

a) Policy issues

The right to association is a hallmark of modern day democratic civilization. In the Philippines - aside from our international commitments - the right to association is a constitutionally guaranteed right.

Trade unions are among those considered as democratic institutions necessary to insure and sustain our system of democracy. You may, therefore, wish to consider as well the right to association in your discussion today.

Compared to the experience of other countries where trade union enrollment has declined as a consequence of globalization, the Philippines, contrariwise has registered an increase in trade union membership. Table 2 shows trade unions membership for the period 1993 to 2002. In absolute terms, the membership increased from 3,196,750 in 1993 to 3,919,684 or a growth by 733,934 for the last decade. But in terms of percentage to total wage and salaried workers, their membership declined from 29.6% in 1993 to 26.7% in year 2002.

However, given that our wage and salaried workers only constitute 18% to 21% of the total work force, trade union membership would appear relatively insignificant. Much more so if we consider that the trade unions have traditionally

been perceived as a tool to protect and improve the standard of living of Filipino workers in general.

Table 2. Number and Membership of Existing Labor Organization as Percent To Wage and Salaried Workers, Philippines: 1993 – 2002

Year	Total Existing Labor Organizations		
	Number	Membership	% to Total Wage & Salaried Workers
1993	6,340	3,196,750	29.6
1994	7,274	3,511.084	31.0
1995	7,882	3,586,835	30.2
1996	8,250	3,612,353	28.6
1997	8,822	3,634,638	27.0
1998	9,374	3,686,773	27.0
1999	9,850	3,731,076	26.4
2000	10,296	3,788,304	27.2
2001	10,924	3,849,976	26.7
2002	11,365	3,916,684	26.7

Source of information: 2003 Yearbook of Labor Statistics, Department of Labor and Employment, Manila

The above figures that were based on the reports of trade unions had recently been contested as bloated. As a result, the Bureau of Labor Relations of the Department of Labor and Employment had to revise the figures beginning the year 2002. Table 2a shows the membership of trade unions based on survey conducted by the Bureau of Labor Relations.

The figures below show that the actual membership of trade unions is half of what they reported in Table 2. They also indicate an increase in membership from 1,469,338 to 1,572,289 in the years 2002 and 2004, respectively. These figures, however, represent a little over four (4%) percent of the total workforce of 34 million.

Table 2a. Number and Membership of Existing Labor Organization and Other Workers Associations, Philippines: 2002 – 2004

Indicators	2002	2003	2004
Unions Registered	910	647	777
Membership of Newly Registered Unions	89,187	44,794	53,857
Existing Unions	15,444	16,091	16,724
Membership of Existing Unions	1,469,328	1,516,862	1,572,289
Other Workers'Associations (WAs)			
Newly Registered	2,151	1,756	2,254
Membership of Newly Registered Was	72,915	68,897	75,866
Existing Workers' Associations	4,227	5,983	8,237
Members of Existing WAs	141,591	210,488	286,354

Source of Data: Bureau of Labor Relations – Labor Organizations Division

During the presentation of this paper, the Director General of the Employers' Confederation of the Philippines (ECOP) pointed out that based on the 2002/2003 Bureau of Labor and Employment Statistics (BLES) Integrated survey, trade unions membership for the periods 1996, 1997 and 2003 had actually declined. Table 2b below shows the figures on trade unions membership for the said period. Trade unions' enrollment declined from 2,606,000 to 2,582,000 for the periods 1996 and 2003 respectively.

Table 2b. Extent of Unionism in Establishment, 1996, 1997 and 2003

Year	Total Establishments	With Unions		Total Employment	Union Members	% Share
		Number	% Share			
1996	35,249[a]	5,973	16.9	2,606,000	726,000	27.9
1997	43,358[a]	7,028	16.2	2,864,000	681,800	34.4
[a]Employing 10 or More Workers Source of data: Survey of Specific Group of Workers, 1996 &1997, BLES						
2003	24,533[b]	3,640	14.8	2,582,000	521,000	20.2
[b]Employing 20 or more workers						
Source of data: 2002/2003 BLES Integrated Survey						

There is a grain of truth to this argument. As will be discuss later, table 3 shows the declining number of workers covered by collective bargaining agreement. Those workers covered by CBA should expectedly be higher than trade union membership because collective agreement also covers non-union workers who are members of the collective bargaining unit.

Despite the reported growth of trade unions' membership, we can reasonably expect that their enrollment will eventually dwindle. The reason can be found on the provisions of the Labor Code which are concerned with organizing trade unions for the purpose of collective bargaining.

The exercise by the workers of the right to association under the Code is anchored on the concept of regular employee as the determining factor of employment relations. Under Article 234, a trade union can only organize for the purpose of collective bargaining if it is supported by "the names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate."[12] And, as pointed out above, because the rank of the regular employees that is the base of trade unions' organization in this country is declining, it is just a matter of time when their enrollment will eventually go down.

b) Policy options

The first policy option is simply to allow the deterioration of trade unions with the end in view of eventually eradicating them. But I submit this policy option is not acceptable to us because it will result to serious political and economic consequences to our country.

As a nation, the Philippines cannot afford to renege from its international commitment to promote trade unionism as a democratic institution. Moreover, as already stated above, the Philippine Constitution has already determined that freedom of association is not only to be protected but to be promoted as well. And finally, there is of course this issue whether such an option can be politically acceptable to the Filipino people.

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[12] *The full text of Article 234 reads:*

Article 234. 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:

(a) Fifty pesos (P50.00) registration fee;
(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;
(c) The names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate;
(d) If the applicant union has been in existence for one or more years, copies of its annual financial report; and
***(e)** Four (4) copies of the constitution and by-laws of the applicant union, minutes of its adoption or ratification, and the list of the members who participated.*

On the economic front, I am sure you are aware of the on-going free trade and social clauses debate.[12] In this debate, access to the market of World Trade Organization members may be denied to countries that are found to have violated any of the eight (8) ILO Human Rights at Work conventions.[12a] Among these conventions is the Freedom of Association Convention.

If the first option of allowing the trade unions to fade away is not acceptable to us, then we may wish instead to strengthen trade unionism, in line with our international commitment, by enlarging their membership. Trade unions should be allowed to organize the non-regular employees and the larger workers in the informal sector. As discussed above, since other types of employment relations have now become a regular feature in employment relations, these workers should also be allowed to join trade unions.

We could approach this problem by changing the provisions on the organization of unions. We may propose a change in policy that will allow a particular number of workers, for example twenty (20), of similar skills or belonging to the same craft, to form a union for their mutual aid and protection and, as we will discuss later, for collective negotiations.

This option is not new as it simply brings us back to the original concept of trade unionism that was based on craft rather industrial unit. Under the British system for instance you may have a plumber unions, builder unions, etc. If we need the services of a plumber, then we go to the hiring hall of the union to ask them to provide us with a plumber. And even in the Philippines, we have the stevedores unions that do not have any employment relations with the vessel that needs their services. A vessel that docks in South Harbor may go to a stevedore union to hire a gang or two to unload her cargo.

One caveat, however. Let me admit that I had occasion to discuss this proposal with some of our friends in the trade union movement. They objected to this proposal because they believed it could result to multiplicity of trade unions.

5.2.4. On collective bargaining

a) Policy issues

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[12] *There is an existing debate on free trade and social clause. Under this debate, access to the market of members of WTO will be conditioned on the countries compliance with the eight (8) ILO Human Rights at Work Conventions. These Conventions could be broadly classified as:*
(a) freedom of Association and effective recognition of the right to collective bargaining;
(b) the elimination of all forms of force or compulsory labor;
(c) the effective abolition of child labor; and
(d) the elimination of discrimination in respect of employment and occupation.
For more see for example Department of Labor and Employment (1999) ***ILO Conventions and Philippine Laws****, DOLE International Labor Affair Service, Manila*

[12a] *During the conference, the ILO representative pointed out that ILO has already abandoned participation on this debate as tying down labor standards with access to the market of WTO members will constitute another form of protection*

The other policy area that you may wish to look into concerns the concept of collective bargaining agreement. Under Article 251 of the Labor Code, the concept of collective bargaining refers to negotiation between the parts with the whole.[13] Consistent with the other provisions of the Code, collective bargaining is a right that could be exercised exclusively by workers in the formal sector.

Because collective bargaining is limited to the workers of the formal sector, its coverage is also limited. And because of the shift of economic paradigm that resulted to a shrinking in the ranks of workers in the formal sector, the number of workers covered by collective bargaining agreement is also progressively declining.

Table 3 shows the total number Collective Bargaining Agreement and the extent of coverage for the period from 1993 to 2002. The number of CBAs declined from 4,983 in 1993 to 2,700 in 2002. The number of workers covered by the CBA likewise declined from 608,876 in 1993 to 528,029 or a removal of 80,847 workers.

Table 3. Existing Collective Bargaining Agreement (CBAs), Newly Filed and Workers Covered, Philippines: 1993 - 2002

Year	Existing CBAs		New CBAs	
	Number	Workers Covered	Number	Workers Covered
1993	4,983	608,876	1,084	83,885
1994	4,497	532,185	762	56,942
1995	3,264	363,514	990	109,380
1996	3,398	410,777	818	131,446
1997	2,987	525,007	532	92,149
1998	3,106	551,021	432	68,616
1999	2,956	529,078	413	64,703
2000	2,687	484,278	419	73,109
2001	2,518	461,559	386	70,752
2002	2,700	520,029	588	114,417

*Source: Department of Labor and Employment, **2003 Yearbook of Labor Statistics**, DOLE, Manila*

[13] *The full text of Article 251 reads:*

***Article 251. Duty** to bargain collectively in the absence of collective bargaining agreements. In the absence of an agreement or other voluntary arrangement providing for a more expeditious manner of collective bargaining, it shall be the duty of the employer and the representatives of the employees to bargain collectively in accordance with the provision of this Code.*

Given the figure above that shows less than one million workers out of the estimated 36 million Filipino workers are covered by Collective Bargaining Agreements, we need not emphasize its impact or lack thereof in improving the standard of living of the Filipino workers in general.

b) Policy options

As discussed above, collective bargaining, aside from the fact that it is one of the standards enumerated in the social clause, is part of our international obligations as a nation. We are committed to improve its application rather than eliminate the same.

In the Philippines, our Supreme Court is emphatic in declaring collective bargaining agreement as a social contract imbued with national interest. As such it has to be protected. And this is the reason why collective bargaining agreement should be registered with the Department of Labor and Employment as they affect not only the contracting parties but also those who have not participated therein.

The policy option I suggest is to reexamine our concept of collective bargaining that is limited to negotiations between the parts with the whole. For example, suppose a pedi-cab drivers association in one subdivision will conclude an agreement with the home owners association as to the rate of pay and exclusivity of the services, will this type of agreement not be a social agreement imbued with national interest akin to Collective Bargaining? Is it not possible, therefore, to have an agreement that should be duly protected by law even if no employment relations exists?

Another example: If an organization of cigarette street vendors will conclude an agreement with Fortune Tobacco that will give them discount in the purchase of their goods, is this agreement not a social agreement imbued with national interest that would be entitled to legal protection similar to collective bargaining agreement? I submit that changing our concept of the collective is in line with globalization as will be discussed below in the portion on contracting out.

5.2.5. On outsourcing

a) Policy issues

Perhaps the most controversial aspect of this policy review from the point of view of the participants in this conference concerns contracting out or outsourcing. As pointed out above, while there is no direct ban on contracting out, the Labor Code discourages such practice when it provided in Article 280 the definition of regular employees as those “whose services have been engaged to perform activities usually necessary and desirable in the usual business or trade of the employer.”

Article 106 the Code explicitly recognized contracting out as a business strategy.[14] As a general rule, employers are free to contract out any activity. The law bans only one type of contracting out: the type that would constitute unfair labor practice.

Contrary to the general impression, the Code has not prohibited labor-only contracting. The Labor Code simply allowed the Secretary of Labor to determine whether labor only contracting should be regulated or banned. In a sense, it was the Secretary of Labor through appropriate issuance that banned labor only contracting.

Contracting out or what is commonly known now as outsourcing can be broadly classified into two (2) types: (a) tripartite or triangular relations; and b) bi-partite relations.

(a) Tripartite or triangular relations – This type of outsourcing presupposes a second employer that is contracted to perform an activity of the principal employer.

An examination of the provisions of Article 106 shows that the Code focuses more on tripartite or triangular relations rather than bipartite relations. Thus the law says "whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code."[15] It simply states that when the contractor or subcontractor fails to pay the workers then the principal employer shall be jointly and severally liable with the contractor or subcontractor to the claims of the workers.

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[14] *The full text of Article 106 reads:*

Article 106. Contractor or subcontractor. – Whenever an employer enters into a contract with another person for the performance of the former work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of the workers established under this Code. In so prohibiting or restricting, he may make appropriate distinction between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

[15] *Ibid.*

(b) Bilateral relations – Bilateral relations occur when an employer directly contracts out to the workers an activity without any contractor or subcontractor.

For our purpose this is perhaps the most important type of contracting out forced upon us by globalization. Because of the acquired skills of the workers performing a particular activity, the trend is to form labor cooperatives composed of former employees that will contract out such activity.

Lastly, and in line with globalization, this bilateral arrangement points out to the possibility of having a collective bargaining agreement without the existence of employer relations. This type of agreement today are generally classified as business contract and, therefore, not imbued with national interest. It is, therefore, not entitled to special protection by law.

b) Policy options

On the trilateral or triangular relations, the problem that we commonly face concerns international outsourcing. How can we implement Article 106 cases like the call centers whose primary employer is located or domiciled in New York and without any office in the Philippines? The logical option is to require them to put up a bond to answer for any liability that they may incur to the workers in the Philippines, but if we do this, will such corporations still be willing to operate in the Philippines? This is one of the trail blazing issues that we have to grapple with.

On the bilateral relations, you may wish to consider expanding collective bargaining agreement to include agreements entered into by trade unions or labor cooperatives concerning activities that they have contracted. In the case of San Miguel Corporation, for instance, it phased out its sales force, putting in its place its former workers who have been organized into a cooperative allowed to contract out the sale activities. Will this contract not qualify as collective bargaining agreement especially if it contains an exclusivity clause?

The case of Dole Philippines is another example. As a consequence of land reform their agricultural workers became owners of the farms. These former workers formed themselves into a workers' cooperative (this is because of the legal limit in organizing trade unions) and Dole concluded an agreement with them to purchase all their agricultural products. In other words, the relations had been converted from one of employment relations to supplier. Essentially, this is a business contract and at the moment treated as such without special protection. Will this type of contract that provides for exclusivity of supplier not qualify as collective bargaining agreement and, therefore, imbued with national interest that will be entitled to special protection?

The problem from the perspective of policy that has to be confronted concerns the prohibition of labor-only contracting. We could reasonably expect that as workers organization, whether trade unions or labor cooperatives, they will not be able to comply with the legal requirement of sufficient capital.

The option that is available to us is to dispense with the requirement of sufficient capital when the contracting party is a trade union or labor cooperative. Put in different perspective, it would mean to consider skills of the workers as compliance with the requirement of sufficient capital.

5.2.6. Assumption of jurisdiction

a) Policy issues

Another issue that you may wish to consider concerns the assumption of jurisdiction or certification of disputes to the National Labor Relations Commission. Under Article 263 (g) of the Labor Code,[16] the law authorizes the

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[16] *The full text of Article 263 (g) reads:*

Article 263. Strikes, picketing, and lockouts. –

x x x

(g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or lockout employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.

In line with the national concern for the highest respect accorded to the right of patients to life and health, strikes and lockouts in hospitals, clinics and similar medical institutions shall, to every extent possible, be avoided, and all serious efforts, not only by labor and management but government as well, be exhausted to substantially minimize, if not prevent, their adverse effects on such life and health, through the exercise, however legitimate, by labor of its right to strike and by management to lockout. In labor disputes adversely affecting the continued operation of such hospitals, clinics or medical institutions, it shall be the duty of the striking union or locking-out employer to provide and maintain an effective skeletal workforce of medical and other health personnel, whose movement and services shall be unhampered and unrestricted, as are necessary to insure the proper and adequate protection of the life and health of its patients, most especially emergency cases, for the duration of the strike or lockout. In such cases, therefore, the Secretary of Labor and Employment may immediately assume, within twenty four (24) hours from knowledge of the occurrence of such strike or lockout, jurisdiction over the same or certify it to the Commission for compulsory arbitration. For this purpose, the contending parties are strictly enjoined to comply with such orders, prohibitions and/or injunctions as are issued by the Secretary of Labor and Employment or the Commission, under pain of immediate disciplinary action, including dismissal or loss of employment status or payment by the lacking-out employer of backwages, damages and other affirmative relief, even criminal prosecution against either or both of them.

The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that in his opinion, are indispensable to the national interest,

Secretary of Labor and Employment to assume jurisdiction over "strikes or lockout in an industry indispensable to the national interest."[17] As a general rule, the law leaves to the discretion of the Secretary of Labor and Employment the decision as to what industry is indispensable to national interest.

From a historical point of view, it has been argued that the above provision of law was a Martial Law instrument that was used to insure industrial peace during an allegedly abnormal situation in the country.[18] Whether this law succeeded in achieving its objectives during the Martial Law period or not - and this remains debatable - the fact is we allowed this law to continue even after we shifted political regime from Martial Law to the present democratic system.

The issue on this count is that assumption of jurisdiction or its defiance has increasingly been used to achieve political ends. Either of the party defies a legitimate return to work order arising out of assumption of jurisdiction to show the impotence, and thereby, embarrass the Government. In Hacienda Luisita for example, it would appear that there was deliberate refusal by the workers to comply with the return to work order. Some of our friends in the Department of Labor and Employment informed me that the striking workers deliberately provoked the government into using force by putting a chain on the gate so that it could not be opened and so to force stoppage of operations. To further embarrass the government, the striking workers and their sympathizers took over the building of the Department of Labor and Employment in Intramuros. The end result was that the workers succeeded in elevating a simple labor dispute into a political activity. And because of Congressional investigations that followed the incident, the labor issues that were the original causes of the strike have been put to the back burner.

The policy issue in this area, I venture to suggest, is how to prevent the use of a labor tool such as assumption of jurisdiction from being utilized to achieve political ends.

b) Policy options

It would seem to me that the problem of defiance of return to work order in an assumption of jurisdiction situation could be attributed to the unlimited discretion of the Secretary of Labor and Employment in defining industries indispensable to national interest that would warrant the exercise of such power. To embarrass the Government, the defying party normally points out the fact that their company does not belong to industries indispensable to national interest.

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and from intervening at any time and assuming jurisdiction over any such labor dispute in order to settle or terminate the same.

x x x

[17] *Ibid.*

[18] *See for example the testimony of former Undersecretary Amado G. Inciong during the Congressional investigation of the Hacienda Luisita case.*

To resolve this problem, the first option you may wish to consider is to pre-determine the industries indispensable to national interest. By so predetermining such industries, the parties will be aware even before they file their notice of strike or lockout that their company belongs to industry indispensable to national interest. And therefore, the Secretary of Labor and Employment will eventually assume jurisdiction or certify their dispute to the National Labor Relations Commission.

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The other option is to require the conduct of a hearing for the purpose of determining whether a company belongs to an industry indispensable to national interest before the Secretary of Labor and Employment assumes jurisdiction or certify the case to the NLRC. This will give the parties a chance to contest whether their company can be classified as belonging to an industry indispensable to national interest.

5.2.7. On the eight (8) hour labor law.

a) Policy issues

The unit of measurement prescribed by the Labor Code in the determination of employment relations is daily. Under Article 83 of the Labor Code "the normal hours of work of any employee is eight (8) hours a day."[19] This provision of law limits the ability of employers to achieve flexibility that is necessary to remain competitive in a global economy.

b) Policy options

You may wish to consider shifting measurement of employment relations from the present daily to hourly. For example you may hire a worker only during the time you need his services as for example three (3) or (4) hours. By so shifting measurement employers can achieve maximum flexibility in employment relations.

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[19] *The provisions of Article 83 reads:*

(1, Article 83. Normal Hours of Work. – The normal hours of work of any employee shall not exceed eight (8) hours a day.

Health personnel in cities and municipalities with a population of at least one million 000,000) or in hospitals and clinics with a bed capacity of at least one hundred (100) shall hold regular office hours for eight (8) hours a day, for five (5) days a week, exclusive of time for meals, except where the exigencies of the service require that such personnel work for six (6) days or forty-eight (48) hours, in which case they shall be entitled to an additional compensation of at least thirty per cent (30%) of their regular wage for work on the sixth day. For purposes of this Article "health personnel" shall include: resident physicians, nurses, nutritionists, dieticians, pharmacists, social workers, laboratory technicians, paramedical technicians, psychologists, midwives, attendants and all other hospital or clinic personnel.

Shifting measurement from daily to hourly will also be advantageous to the worker. A worker may opt to work with one employer for four (4) hours and with another employer for another four (4) hours. If the worker is a nursing mother, she may work only for four days and she may also chose the time of work that will not be in conflict with her motherly obligation. In other words, the worker will now have full control of his labor power.

This shifting measurement will also render the concept of overtime pay archaic. The reason why the law requires premium payment for overtime is that the workers are forced to render service beyond the eight (8) hour. If we shift from daily determination to hourly, then a worker who would need additional income will be able to program his work. He may seek employment with a third employer for another four (4) hours.

This option is not new as law practitioners for example or consultants use hourly rate as measurement in the determination of their employment relations. Also, many of the Filipinos working for instant in Europe and the United States do have multiple employers. Moreover, the shift in measurement from daily to hourly is more in line with a global economy.

5.2.8. On the need to update the provisions of the Labor Code

Aside from the need to amend the Labor Code as a consequence of the shift in economic paradigm and the advancement in technology, there is also a need to update its various provisions. Because of time constraint however, I will not be able to mention all the provisions that need updating. Let me, however, give you two (2) situations to drive in my point.

First, let's consider the provision on wages. The law requires that the workers shall be paid in legal tender,[20] in the place of undertaking or near the workplace[21] and directly to him.[22] However, with the advent of computers, many

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[20] Article 102 of the Labor Code reads:

Article 102. Forms of Payment. – No employer shall pay the wages of an employee by means of promissory notes, vouchers, coupons, tokens, tickets, chits or any object other than legal tender, even when expressly requested by the employee.

Payment of wages by check or money order shall be allowed when such manner of payment is customary on the date of effectivity of this Code, or is necessary because of special circumstances as specified in appropriate regulations to be issued by the Secretary of Labor or as stipulated in a collective bargaining agreement.

[21] *Article 104 of the Labor code reads:*

Article 104. Place of payment. – Payment of wages shall be made at or near the place of undertaking, except as otherwise provided by such regulations as the Secretary of Labor may prescribe under conditions to ensure greater protection of wages.

[22] *Article 105 of the Labor Code reads:*

Article 105. Direct Payment of Wages. – Wages shall be paid directly to the workers to whom they are due except:

of the workers are now paid through their ATM cards. This practice, I submit, is contrary to law as the ATM card is not a legal tender, the payment is not in the place or near the place of employment and more important the wage is not directly paid to the worker concerned.

The second example concerns the provisions of night differential. The Labor Code requires an additional compensation for "work performed between ten o'clock in the evening and six o'clock in the morning."[23] As discussed above, a global economy does not have territorial boundaries. It also crosses time zones. In the call centers for example, workers are suffered to work at night because that is the working time in the country where the business of their employer operates. The point I am driving at is that this provision of law is too domestic oriented that it may no longer have a place in a global economy.

5.3 Efficiency

The final yardstick in analyzing and examining public policy concerns its efficiency. As we have pointed out, efficiency refers to cost and benefit analysis on the implementation of public policies. For our purpose, we need not delve deeply into this yardstick as this more a concern of the government rather than the private sector.

There is, however, a proposal by some sectors to refocus the Code into a more employment-generating law. Part of their proposal to maximize employment promotion is to merge the Department of Labor and Employment with the Department of Industry.

(a) In cases of force majeure rendering such payment impossible or under other special circumstance to be determined by the Secretary of Labor in appropriate regulations, in which case the worker may be paid through another person under written authority given by the worker for the purpose; or

(b) Where the worker has died, in which case the employer may pay the wages of the deceased worker to the heirs of the latter without the necessity of intestate proceedings. The claimants, if they are all of ages, shall execute an affidavit attesting to their relationship to the deceased and the fact that they are his heirs, to the exclusion of all other persons. If any of the heirs is a minor, the affidavit shall be executed on his behalf by his natural guardian or next of kin. The affidavit shall be presented to the employer who shall make payment through the Secretary of Labor or his representative. The representative of the Secretary of Labor shall act as referee in dividing the amount paid among the heirs. The payment of wages under this Article shall absolve the employer of any further liability with respect to the amount paid.

[23] *Article 86 of the Code reads:*
Article 86. Night shift differential. – Every employee shall be paid a night shift differential of not less than ten per cent (10%) of his regular wage for each hour of work performed between ten o'clock in the evening and six o'clock in the morning

6. Conclusion

This paper has attempted to discuss Labor Market and Industrial Relations environments focusing on policy issues, concerns and options in a global economy. It was conceived primarily as a working paper to provoke discussions on the kind of policy changes that should be adopted to align the Philippine labor administration with the new economic system. And because it is primarily a labor policy paper it has focused on the Labor Code as the main source of labor policies in the Philippines.

The Labor Code is the main instrument that established labor administration in the country. This labor administration system compliments the need of the old economic regime called import substitution.

This paper discussed the various labor policy issues and concerns that arose as a consequence of globalization. The problem as we see them now is that while there has been a shift in economic paradigm our Code that established a subsystem of the economic system remained the same. The consequence is that many of its provisions have now become too domestic and archaic which could not properly respond to situation created by the globalization.

The change in economic paradigm should necessitate a corresponding change in paradigm of the labor administration system and this means amending the Labor Code to make it more responsive to the new economic system.

There are several bills now pending in Congress that seek to amend the Labor Code. A perusal of these bills, however, shows that they addressed the specific provisions of the Code without first looking at changing the broad labor administration paradigm to conform to the shift in economic paradigm. In other words, it saw the trees but not the forest.

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