



HOUSE OF REPRESENTATIVES

H. No. 9169

BY REPRESENTATIVES NOGRALES (K.A.), NOGRALES (J.J.), ANGARA-CASTILLO, CHIPECO, MENDOZA, BELMONTE (R.),TING, GO (M.), UNABIA, TAMBUNTING, CUARESMA, CASTRO (F.H.), ROA-PUNO, HOFER, ORTEGA (V.N.), PALMA, NOEL, SALO, GONZALES (A.P.), PIMENTEL, SAVELLANO, GARIN (R.), GARCIA (J.E.), FORTUN, BRAVO (A.), BERTIZ, CAMPOS, SALON, BELARO, GULLAS, TEJADA, VIOLAGO, ZUBIRI, ALEJANO, GONZALES (A.D.), BORDADO, MANGAOANG, CARI, TREÑAS, FERNANDO, NUÑEZ-MALANYAON, TUPAS, BATAOIL, CUARESMA, ROMUALDO, SILVERIO, DALIPE, CALDERON, MARCOLETA AND VERGARA, PER COMMITTEE REPORT NO. 1312

AN ACT

RATIONALIZING GOVERNMENT INTERVENTION IN LABOR DISPUTES BY ADOPTING THE ESSENTIAL SERVICES CRITERIA IN THE EXERCISE OF THE ASSUMPTION OR CERTIFICATION POWER OF THE SECRETARY OF LABOR AND EMPLOYMENT, AND DECRIMINALIZING VIOLATIONS THEREOF, AMENDING FOR THIS PURPOSE PRESIDENTIAL DECREE 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

1 **SECTION 1.** Article 278 of the Labor Code is hereby amended to read as follows:

2 "ART. 278. *Strikes, picketing, and lockouts.* – (a) It is the policy of the State
3 to encourage free trade unionism and free collective bargaining.

4 "(b) Workers shall have the right to engage in concerted activities for purposes
5 of collective bargaining or for their mutual benefit and protection. The right of
6 legitimate labor organizations to strike and picket and of employers to lockout[,
7 consistent with the national interest,] shall continue to be recognized and respected.
8 However, no labor union may strike and no employer may declare a lockout on
9 grounds involving inter-union and intra-union disputes.

10 "(c) In cases of bargaining deadlocks, the duly certified or recognized
11 bargaining agent may file a notice of strike or the employer may file a notice of lockout
12 with the [Ministry] **DEPARTMENT OF LABOR AND EMPLOYMENT** at least **THIRTY (30)**
13 days before the intended date thereof. In cases of unfair labor practice, the period of
14 notice shall be **FIFTEEN (15)** days and in the absence of a duly certified or recognized
15 bargaining agent, the notice of strike may be filed by any legitimate labor organization

1 in behalf of its members. However, in case of dismissal from employment of union
2 officers duly elected in accordance with the union constitution and by-laws, which may
3 constitute union busting, where the existence of the union is threatened, the **FIFTEEN**
4 **(15)**-day cooling-off period shall not apply and the union may take action immediately.

5 “(d) The notice must be in accordance with such implementing rules and
6 regulations as the [Minister] **SECRETARY** of Labor and Employment may promulgate.

7 “(e) During the cooling-off period, it shall be the duty of the [Ministry]
8 **DEPARTMENT OF LABOR AND EMPLOYMENT** to exert all efforts at mediation and
9 conciliation to effect a voluntary settlement. Should the dispute remain unsettled
10 until the lapse of the requisite number of days from the mandatory filing of the notice,
11 the labor union may strike or the employer may declare a lockout.

12 “(f) A decision to declare a strike must be approved by a majority of the total
13 union membership in the bargaining unit concerned, obtained by secret ballot in
14 meetings or referenda called for that purpose. A decision to declare a lockout must be
15 approved by a majority of the board of directors of the corporation or association or of
16 the partners in a partnership[,] obtained by secret ballot in a meeting called for that
17 purpose. The decision shall be valid for the duration of the dispute based on
18 substantially the same grounds considered when the strike or lockout vote was taken.
19 The [Ministry] **DEPARTMENT OF LABOR AND EMPLOYMENT** may, at its own initiative
20 or upon the request of any affected party, supervise the conduct of the secret
21 balloting. In every case, the union or the employer shall furnish the [Ministry]
22 **DEPARTMENT OF LABOR AND EMPLOYMENT** the results of the voting at least seven
23 **(7)** days before the intended strike or lockout, subject to the cooling-off period herein
24 provided.

25 “(g) When[, in his opinion,] there exists a labor dispute causing or likely to
26 cause a strike or lockout in an industry [indispensable to the national interest,]
27 **ENGAGED IN ESSENTIAL SERVICES**, the Secretary of Labor and Employment may
28 assume jurisdiction over the dispute [and decide it or certify the same to the
29 Commission for compulsory arbitration] **PROVIDED THAT ANY OF THE FOLLOWING**
30 **CONDITIONS IS PRESENT:**

- 1 1. BOTH PARTIES HAVE REQUESTED THE SECRETARY OF LABOR AND
2 EMPLOYMENT TO ASSUME JURISDICTION OVER THE LABOR DISPUTE; OR
- 3 2. UPON REQUEST OR PETITION BY EITHER PARTIES OR *MOTU PROPIO* ON
4 THE PART OF THE SECRETARY OF LABOR AND EMPLOYMENT AFTER A
5 CONFERENCE CALLED BY THE OFFICE OF THE SECRETARY ON THE
6 PROPRIETY OF ITS ISSUANCE HAS BEEN CONDUCTED.

7 IN SUCH A CASE, THE SECRETARY OF LABOR AND EMPLOYMENT MAY DECIDE
8 OR CERTIFY THE LABOR DISPUTE TO THE NATIONAL LABOR RELATIONS COMMISSION
9 FOR COMPULSORY ARBITRATION OR TO A VOLUNTARY ARBITRATOR OR PANEL OF
10 VOLUNTARY ARBITRATORS.

11 [Such] SAID assumption OF JURISDICTION [or certification] shall have the
12 effect of automatically enjoining [the intended or] AN impending strike or lockout [as
13 specified in the assumption or certification order]. If [one] A STRIKE OR LOCKOUT has
14 already taken place at the time of assumption [or certification], all striking or locked
15 out employees AND OTHER EMPLOYEES SUBJECT OF THE NOTICE OF STRIKE OR
16 LOCKOUT shall immediately return to work and the employer shall immediately
17 resume operations and readmit all [workers] EMPLOYEES under the same terms and
18 conditions prevailing before the strike or lockout. [The Secretary of Labor and
19 Employment or the Commission may seek the assistance of law enforcement agencies
20 to ensure compliance with this provision as well as with such orders as he may issue to
21 enforce the same.

22 "In line with the national concern for and the highest respect accorded to the
23 right of patients to life and health, strikes and lockouts in hospitals, clinics and similar
24 medical institutions shall, to every extent possible, be avoided, and all serious efforts,
25 not only by labor and management but government as well, be exhausted to
26 substantially minimize, if not prevent, their adverse effects on such life and health,
27 through the exercise, however legitimate, by labor of its right to strike and by
28 management to lockout. In labor disputes adversely affecting the continued operation
29 of such hospitals, clinics or medical institutions, it shall be the duty of the striking
30 union or locking-out employer to provide and maintain an effective skeletal workforce
31 of medical and other health personnel, whose movement and services shall be

1 unhampered and unrestricted, as are necessary to insure the proper and adequate
2 protection of the life and health of its patients, most especially emergency cases, for
3 the duration of the strike or lockout. In such cases, therefore, the Secretary of Labor
4 and Employment may immediately assume, within twenty four (24) hours from
5 knowledge of the occurrence of such a strike or lockout, jurisdiction over the same or
6 certify it to the Commission for compulsory arbitration. For this purpose, the
7 contending parties are strictly enjoined to comply with such orders, prohibitions
8 and/or injunctions as are issued by the Secretary of Labor and Employment or the
9 Commission, under pain of immediate disciplinary action, including dismissal or loss of
10 employment status or payment by the locking-out employer of backwages, damages
11 and other affirmative relief, even criminal prosecution against either or both of them.]

12 **ESSENTIAL SERVICES REFER TO FUNCTIONS OR SERVICES RENDERED BY AN**
13 **ESTABLISHMENT WHICH, IF INTERRUPTED, WOULD ENDANGER THE LIFE, PERSONAL**
14 **SAFETY OR HEALTH OF THE WHOLE OR PART OF THE POPULATION. FOR THIS**
15 **PURPOSE, THE SECRETARY OF LABOR AND EMPLOYMENT, BY APPROPRIATE**
16 **REGULATIONS, SHALL DETERMINE THE INDUSTRIES ENGAGED IN ESSENTIAL**
17 **SERVICES AFTER CONSULTATIONS WITH THE NATIONAL TRIPARTITE INDUSTRIAL**
18 **PEACE COUNCIL.**

19 **IN LABOR DISPUTES AFFECTING INDUSTRIES ENGAGED IN ESSENTIAL**
20 **SERVICES, IT SHALL BE THE DUTY OF THE UNION AND EMPLOYER TO PROVIDE AND**
21 **MAINTAIN THE OPERATION OR DELIVERY OF SERVICES. IN THE CASE OF HOSPITALS,**
22 **CLINICS OR MEDICAL INSTITUTIONS, THE UNION AND EMPLOYER SHALL PROVIDE**
23 **AND MAINTAIN AN EFFECTIVE AND FUNCTIONAL WORKFORCE WHOSE MOVEMENT**
24 **AND SERVICES SHALL BE UNHAMPERED AND UNRESTRICTED AS ARE NECESSARY TO**
25 **ENSURE THE PROPER AND ADEQUATE PROTECTION OF THE LIFE, PERSONAL SAFETY,**
26 **AND HEALTH OF THEIR PATIENTS, MOST ESPECIALLY IN EMERGENCY CASES, FOR THE**
27 **DURATION OF THE LABOR DISPUTE.**

28 "The foregoing notwithstanding, the President of the Philippines shall not be
29 precluded from determining the industries that[, in his opinion, are indispensable to
30 the national interest,] **ARE ENGAGED IN ESSENTIAL SERVICES** and from intervening at

any time and assuming jurisdiction over any such labor dispute in order to settle or terminate the same **DURING SEVERE NATIONAL EMERGENCIES.**

h) [Before or at any stage of the compulsory arbitration process, the parties may opt to submit their dispute to voluntary arbitration.] **WITHIN FIVE (5) DAYS FROM THE ISSUANCE OF THE ASSUMPTION OF JURISDICTION OR CERTIFICATION ORDER, A PRELIMINARY CONFERENCE OR HEARING SHALL IMMEDIATELY BE CONDUCTED BY THE OFFICE OF THE SECRETARY OF LABOR AND EMPLOYMENT, THE NATIONAL LABOR RELATIONS COMMISSION OR THE VOLUNTARY ARBITRATOR OR PANEL OF VOLUNTARY ARBITRATORS, AS THE CASE MAY BE.**

i) [The Secretary of Labor and Employment, the Commission or the voluntary arbitrator or panel of voluntary arbitrators shall decide or resolve the dispute within thirty (30) calendar days from the date of the assumption of jurisdiction or the certification or submission of the dispute, as the case may be. The decision of the President, the Secretary of Labor and Employment, the Commission or the voluntary arbitrator or panel of voluntary arbitrators shall be final and executory ten (10) calendar days after receipt thereof by the parties.] **IN CASE OF ACTUAL OR IMPENDING STRIKE OR LOCKOUT IN INDUSTRIES THAT ARE NOT ENGAGED IN ESSENTIAL SERVICES, THE SECRETARY OF LABOR AND EMPLOYMENT MAY ASSUME JURISDICTION UPON JOINT REQUEST OF BOTH PARTIES IN THE LABOR DISPUTE AFTER THE MANDATORY CONCILIATION. EITHER OR BOTH PARTIES MAY ALSO OPT TO SUBMIT TO COMPULSORY OR VOLUNTARY ARBITRATION.**

SEC. 2. Article 279 of the Labor Code is hereby amended to read as follows:

"ART. 279. Prohibited activities. – (a) No labor organization or employer shall declare a strike or lockout without first having bargained collectively in accordance with Title VII of this Book or without first having filed the notice required in the preceding Article or without the necessary strike or lockout vote first having been obtained and reported to the [Ministry] **DEPARTMENT OF LABOR AND EMPLOYMENT.**

"No strike or lockout shall be declared after assumption of jurisdiction by the President or the [Minister] SECRETARY or after certification or submission of the

1 dispute to compulsory or voluntary arbitration or during the pendency of cases
2 involving the same grounds for the strike or lockout.

3 "Any worker whose employment has been terminated as a consequence of an
4 [unlawful] **ILLEGAL** lockout shall be entitled to reinstatement with full back wages.
5 [Any union officer who knowingly participates in an illegal strike and any worker or
6 union officer who knowingly participates in the commission of illegal acts during a
7 strike may be declared to have lost his employment status: *Provided, That m*]Mere
8 participation of a worker **OR UNION OFFICER** in a [lawful] strike **DECLARED ILLEGAL**
9 **FOR FAILURE OF THE UNION TO COMPLY WITH PROCEDURAL REQUIREMENTS**
10 **UNDER PARAGRAPH (A) OF THIS ARTICLE** shall not [constitute sufficient] **BE A** ground
11 for termination of his employment, even if a replacement had been hired by the
12 employer during such [lawful] **ILLEGAL** strike.

13 "(b) No person shall obstruct, impede [,] or interfere with by force, violence,
14 coercion, threats or intimidation any peaceful **CONCERTED ACTION INCLUDING**
15 picketing by employees during any labor controversy or in the exercise of the right [of]
16 **TO** self-organization or collective bargaining[,], or shall aid or abet such obstruction or
17 interference.

18 "**ANY WORKER OR UNION OFFICER WHO KNOWINGLY PARTICIPATES IN THE**
19 **COMMISSION OF UNLAWFUL ACTS DURING A STRIKE MAY, AFTER DUE PROCESS, BE**
20 **DECLARED TO HAVE LOST ONE'S EMPLOYMENT.**

21 "(c) No employer shall use or employ any strike-breaker[,], nor shall any person
22 be employed as a strike-breaker.

23 "(d) No public official or employee, including officers and personnel of the
24 [New] Armed Forces of the Philippines or the [Integrated] **PHILIPPINE** National Police
25 [,]or armed person, **PRIVATE SECURITY GUARDS AND SIMILAR PERSONNEL IN THE**
26 **PRIVATE SECURITY AGENCY** shall [bring in,] introduce or escort in any manner [any
27 individual who seeks to replace strikers in entering or leaving the premises of a strike
28 area, or work in place of the strikers] **REPLACEMENT WORKERS**. The police force shall
29 keep out of the picket lines unless actual violence or other criminal acts occur therein[:
30 *Provided, That* nothing herein shall be interpreted to prevent any public officer from

1 taking any measure necessary to maintain peace and order, protect life and property,
2 and/or enforce the law and legal order].

3 "HOWEVER, THE SECRETARY OF LABOR AND EMPLOYMENT OR THE
4 NATIONAL LABOR RELATIONS COMMISSION MAY SEEK THE ASSISTANCE OF LAW
5 ENFORCEMENT AGENCIES TO MAINTAIN PEACE AND ORDER, PROTECT LIFE AND
6 PROPERTY, AND ENFORCE THE LAW AND LEGAL ORDER.

7 "(e) No person engaged in picketing shall commit any act of violence, coercion
8 or intimidation or obstruct the free ingress to or egress from the employer's premises
9 for lawful purposes[,] or obstruct public thoroughfares."

10 SEC. 3. Article 287 of the Labor Code is hereby further amended to read as follows:

11 "Article. 287. [Penalties] **FINES.** – (a) Any person, **EMPLOYER, ORGANIZATION**
12 **OR CORPORATION FOUND** violating any of the provisions of Article 279 of this Code
13 shall be [punished by a] fineD [of] not less than [one thousand pesos (P1,000.00)] **TEN**
14 **THOUSAND PESOS (P10,000.00)** nor more than [ten thousand pesos (P10,000.00)]
15 and/or imprisonment for not less than three (3) months nor more than three (3) years,
16 or both such fine and imprisonment,] **ONE HUNDRED THOUSAND PESOS**
17 **(P100,000.00)** at the discretion of the [court] **NATIONAL LABOR RELATIONS**
18 **COMMISSION.** [Prosecution under this provision shall preclude prosecution for the
19 same act under the Revised Penal Code, and vice versa.]

20 "(b) Upon the recommendation of the [Minister] **SECRETARY** of Labor and
21 Employment and the [Minister] **SECRETARY** of National Defense, foreigners who
22 violate the provisions of this Title shall be subject to immediate and summary
23 deportation by the [Commission on] **BUREAU OF** Immigration [and Deportation] and
24 shall be permanently barred from reentering the country without the special
25 permission of the President of the Philippines.

26 "(c) **THE REGULAR COURTS SHALL HAVE JURISDICTION OVER ANY**
27 **CRIMINAL ACTION ARISING FROM VIOLATION OF ANY OF THE PROVISIONS OF**
28 **ARTICLE 279 OF THIS CODE BUT SUBJECT TO THE REQUIRED CLEARANCE FROM THE**
29 **DEPARTMENT OF LABOR AND EMPLOYEMENT ON CASES ARISING OUT OF OR**
30 **RELATED TO A LABOR DISPUTE.**

1 "NO CRIMINAL PROSECUTION UNDER ARTICLE 279 OF THIS CODE MAY BE
2 INSTITUTED WITHOUT A FINAL JUDGMENT THAT AN ILLEGAL STRIKE OR LOCKOUT
3 HAS BEEN COMMITTED. THE PRESCRIPTIVE PERIOD OF THE CRIMINAL OFFENSE
4 SHALL BE CONSIDERED INTERRUPTED DURING THE PENDENCY OF ADMINISTRATIVE
5 PROCEEDINGS: *PROVIDED, HOWEVER*, THAT THE FINAL JUDGMENT IN THE SAID
6 PROCEEDINGS SHALL NOT BE BINDING IN THE CRIMINAL CASE NOR SERVE AS AN
7 EVIDENCE OF GUILT.

8 "(D) COMPLAINTS ON ACTS OR OMISSIONS OF THE PNP OR AFP
9 PERSONNEL OR PUBLIC PROSECUTORS IN VIOLATION OF ARTICLE 279 OF THIS CODE
10 SHALL BE FILED WITH THEIR RESPECTIVE AGENCIES WITHOUT PREJUDICE TO THE
11 FILING OF THE APPROPRIATE CASES BEFORE THE OMBUDSMAN."

12 **SEC. 4.** The Secretary of Labor and Employment shall promulgate the necessary rules and
13 regulations to implement the provisions of this Act.

14 **SEC. 5.** If any part or provision of this Act is declared unconstitutional or invalid, the
15 remainder of this Act or the provisions not otherwise affected shall remain valid and subsisting.

16 **SEC. 6.** All laws, presidential decrees, proclamations, executive orders, issuances, rules and
17 regulations, or any part thereof inconsistent with the provisions of this Act are hereby repealed,
18 amended or modified accordingly.

19 **SEC. 7.** This Act shall take effect fifteen (15) days after its publication in the *Official Gazette*
20 or in a newspaper of general circulation.

Approved,