Strengthening unionism and collective bargaining in the Philippines: A strategy paper

Atty Benedicto Ernesto R. Bitonio Jr.

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Table of contents

List of tables

List of figures

List of charts

List of boxes

List of abbreviations

ADR	Alternative Dispute Resolution
BLR	Bureau of Labor Relations
CBA	Collective Bargaining Agreement
CBC	Collective Bargaining Coverage
CHED	Commission on Higher Education
CIR	Court of Industrial Relations
DeWS	Decent Work Statistics
DOLE	Department of Labor and Employment
ECC	Employees Compensation Commission
ECOP	Employers' Confederation of the Philippines
FGD	Focused Group Discussion
FoA-CB	Freedom of Association-Collective Bargaining
GDP	Gross Domestic Product
IEC	Information, Education and Communication
ILO	International Labour Organization
IPA	Industrial Peace Act
LDR	Labour Dispute Resolution
LEGS	Labour Education for Graduating Students
LGUs	Local Government Units
LLCS	Labour Law Compliance System
PCC	Philippine Chamber of Commerce
PESO	Public Employment Service Office
PLEP	Philippine Labor and Employment Plan
PMAP	People Management Association of the Philippines
POEA	Philippine Overseas Administration
NCMB	National Conciliation and Mediation Board
NCR	National Capital Region
NEA	National Electrification Administration
NLRC	National Labor Relations Commission
NTIPC	National Tripartite Industrial Peace Council
NWPC	National Wage and Productivity Commission
OWWA	Overseas Workers Welfare Administration
RTWPB	Regional Tripartite Wages and Productivity Board
SEADO	Single Entry Desk Officer
SEBA	Sole and Exclusive Bargaining Agent
SENA	Single-Entry Approach
SEADO	Single Entry Desk Officer
TEC	Tertiary Education Commission
TESDA	Technical Education and Skills Development Authority
TIPC	Tripartite Industrial Peace Council
TUD	Trade Union Density
ULPs	Unfair Labour Practices
VA	Voluntary Arbitration
WTO-GATT	World Trade Organization-General Agreement on Tariffs and Trade

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ABSTRACT

The promotion of unionism and collective bargaining as institutions to achieve social justice and equity is a major State policy in the Philippines. This is enshrined in the Constitution[1]. The primary enabling law to promote it is the Labor Code[2].

The institutional model of unionism and collective bargaining is founded on three premises: (a) a person must first be employed to acquire the right to form or join a union; (b) an employee must belong to a bargaining unit of his or her employer to be represented in collective bargaining; and (c) the union and collective bargaining structure is decentralized and enterprise-based.

The model has the following core elements: (a) a system of mixed regulation for setting terms and conditions of employment, with State-legislated minimum standards underpinning a policy preference for collective bargaining instead of compulsory arbitration; (b) recognition and promotion of freedom of association, with legal preconditions on eligibility to join unions based on employee class or category, a minimum membership requirement, and registration with an administrative authority for a union to acquire legal personality; (c) exclusive bargaining representation where only one union can represent the employees in a bargaining unit, with the union's authority to represent being determined through the competitive process of certification election from which the union obtaining the majority support of the employees in the bargaining unit shall be certified as their sole and exclusive bargaining representative; (d) term of representation status of a union and periodicity of bargaining; (e) definition of norms of bargaining behavior, positively through the duty of both parties to bargain collectively in good faith, and negatively through the prohibition of unfair labour practices; (f) regulation of the right to strike and to lockout; (g) limitations on State action in relation to the exercise of union and collective bargaining rights; and (h) a labour dispute resolution system administered by the State to settle or resolve disputes arising from the exercise of trade union and collective bargaining rights, with preference for consensual and voluntary modes of settlement but with provisions for compulsory arbitration.

The model essentially amalgamates the United States' Norris-La Guardia Act (Anti-Injunction Act) of 1932, the Wagner Act (National Labor Relations Act) of 1935, and the Taft-Hartley Act (Labor-Management Relations Act) of 1947. While a compulsory

[1]1987 Constitution, ART. XIII, Sec. 3.
[2]Labor Code of the Philippines, Book V.

arbitration system had been in place since 1936[3], the model was first introduced to the Philippines through the Industrial Peace Act of 1953, and thereafter through the Labor Code of 1974. Law and practice are influenced and guided by the principles of the International Labour Organization (ILO) Conventions No. 87 (Freedom of Association and Protection of the Right to Organising, 1948) and No. 98 (Right to Organise and to Collective Bargaining, 1951) which the Philippines ratified in 1953.

Government, workers and employers remain committed to the State policy. However, policy outputs, outcomes and impacts have not been encouraging. Union density and collective bargaining coverage have continuously declined over the last 20 years, precipitously so in the last decade. Past and ongoing initiatives to promote the policy have come by bits and pieces. None of these initiatives attempts to change the premises of the model. These can be described as minor and procedural adjustments to some of the core elements of the original model, further affirming and solidifying its premises rather than substantively modernizing it. The evidence shows these initiatives lack the strategic breadth and depth that could create a significantly positive impact in promoting the State policy.

Counting from its American origins, the model is eight decades old. The world of work has vastly changed since then. The assumption of long term regular employment has been weakened by new forms of employment arrangements. Employee classes and categories have become blurred. Market power has dissipated the ability of unions to take wages and other terms of employment out of competition. Collective bargaining is no longer seen as an effective demand-side measure that can raise workers' ability to consume.

In the context of ILO Convention Nos. 87 and 98, there is a need to consider an expanded range of strategic options to foster the State policy and to make trade unionism and collective bargaining relevant to the times. To effectively address this need, the role of legislation as a vehicle for institutional reform cannot be overemphasized. However, the current strategy of government to pursue such reforms in a piecemeal fashion is not adequate. Substantive, coherent, and coordinated measures that revolve on a definite vision and comprehensive strategy are needed.

While the current model intends to promote the policy by facilitating the exercise of union and collective bargaining rights, the evidence shows that its founding premises and core elements also impede or constrain the exercise of these rights. As part of the diagnostic and strategy-building process, it is best for the tripartite partners not to confine themselves to the current model. It is of course important for them to be mindful of the successes and failures of previous experiences and initiatives. Having learned from these, however, they must face the difficult task of deconstructing the premises and core elements of the model and determine which of these have proven to be effective or ineffective in advancing the policy. The strategic challenge is to recognize both the strengths and weaknesses of the current model and to explore new avenues on which a more inclusive and broad-based, enabling, participatory and collaborative model can be shaped.

[3] Compulsory arbitration was the instrument for regulating terms and conditions of employment. This was operationalized through the Court of Industrial Relations (CIR) under Commonwealth Act No. 103, enacted on October 29, 1936.

1. INTRODUCTION

1.1 The policy problem

Freedom of association and the rights to organize and to collective bargaining are universally acknowledged as potent instruments to promote decent terms and conditions of work and achieve harmony between workers and employers in the workplace[4]. More broadly, effective use of these instruments can also enhance productivity, reduce inequality and equitably redistribute income and wealth, make growth more inclusive, and promote industrial peace, progress and social justice.

Having ratified ILO Convention Nos. 87 and 98, the Philippines has made it a national policy to protect and promote these rights, emphasizing the primacy of free collective bargaining and negotiations as the democratic method of regulating the relations between employers and employees. As a rule, no court or administrative agency or official shall have the power to set or fix wages, rates of pay, hours of work or other terms and conditions of employment[5]. The foundation of this policy is respect for freedom of association. Its ultimate vision or goal is redistribution and social justice[6].

Within the national policy is a complex legal infrastructure referred to in this paper as the Philippine industrial relations model. It is underpinned by a civil law tradition and articulated through the 1987 Constitution, the Labor Code and its implementing rules and regulations, a long line of jurisprudential rulings, and various programs of government, trade unions and employers' organizations. The paper takes this model as the critical independent variable that drives national policy performance.

The national policy remains unquestionably relevant and valid. But policy performance has been poor. The ***Philippine Labor and Employment Plan (PLEP): 2011-2016***[7] speaks of "rampant violations" of freedom of association, trade union and collective bargaining rights as well as human rights and civil rights and a "climate of violence and insecurity that further threatens and limits the exercise of trade union rights by hampering the development of genuine, free and independent workers and employers organizations"[8]; of limited enjoyment of these rights to specific groups of workers to the exclusion of those in the informal sector, which is a large part of the economy, and those in the public sector[9]; of declining trade union density and collective bargaining coverage; of absence of avenues and channels for workers representation, or of their inadequacy where these exist; and of delays and problems of governance in the labour dispute resolution system[10].

The model has been ineffective in delivering intermediate outcomes – mainly measured through trade union density and collective bargaining coverage. It has also been ineffective in promoting the ultimate goals of social partnership, redistribution and social justice. This paper argues that the ineffectiveness of the model arises from constraining characteristics embedded in its design. It seeks to help diagnose the causes of poor policy performance and to contribute in shaping a strategy to address these causes. What are the elements and characteristics of the model and how have these facilitated or hindered its performance? How has the model helped achieve

[4]Convention No. 87 (Freedom of Association and Protection of the Right to Organize) and Convention No. 98 (Right to Organise and to Collective Bargaining), International Labour Organization (ILO).
[5]See Labor Code, Art. 211, as amended by Republic Act No. 6715, March 21, 1989.
[6]See 1987 Constitution, ART. III, Sec. 3.
[7]***PLEP 2011-2016*** is a policy document prepared by the Department of Labor and Employment (DOLE) through a tripartite consultative process. It serves as the labour policy blueprint under the political administration of President Benigno Aquino III.
[8]***PLEP 2011-2016***, p. 32.
[9]*Idem.*
[10]*Idem,* pp. 48-52.

intermediate and ultimate policy goals? What strategic options might be considered to enhance its value as an enabling instrument for the social partners to set terms and conditions of employment by themselves and to attain redistribution and social justice?

The paper will use a problem-centered analysis[11] by combining institution-focused and realization-focused approaches. Evaluation will be made on the core elements and characteristics of the model in terms of the institutions and arrangements to promote freedom of association, trade unionism and collective bargaining expressed in international standards and national policy declarations, on one hand, and its performance in terms of helping workers and employers realize desirable outcomes and impacts expressed through objective or quantifiable indicators, on the other[12]. The evaluation is informed by statistical data from the Bureau of Labor and Employment Statistics under the Philippine Statistics Authority, and from the ILO's social dialogue statistical indicators on ways to measure trade union density and collective bargaining coverage rates[13].

The paper has five main parts. Part I deals with the current national policy. Part II deals with the design of the model and breaks down its core elements and characteristics. Part III focuses on policy performance and problem diagnosis. Part IV describes the state of discourse and initiatives in reforming the current model. Part V concludes with a strategic framework and a set of talking points intended to generate options for growing the model. It includes a proposal for a comprehensive country programme on modernizing labor and employment relations, with strengthening freedom of association and collective bargaining as the integral component.

2. PART I: THE NATIONAL POLICY

2.1 Policy vision and goals

The national policy vision on trade unionism and collective bargaining is explicit in the 1987 Constitution[14] :

> "The State shall afford full protection to labour, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
>
> "It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
>
> "The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

[11] William N. Dunn, ***Public Policy Analysis: An Introduction,*** 2nd ed. (1994).
[12] See Amartya Sen, ***The Idea of Justice***, Penguin Books: London (2010). Sen identifies transcendentalism and the realization-focused or comparative approach as independently divergent approaches. The policy problem addressed in this paper, however, may be better addressed using both approaches.
[13] See Susan Hayter and Valentina Stoevska, *"Social Dialogue Indicators: International Statistical Inquiry, 2008-2009,"* Industrial Relations and Employment Department and Department of Statistics, ILO Geneva (2010).
[14] 1987 Constitution, ART. XIII, Sec. 3.

"The State shall regulate the relations between workers and employers, recognizing the right of labour to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth" (emphasis supplied).

The policy vision is reiterated in the Labor Code:

"ART. 211. *Declaration of Policy*. - A. It is the policy of the State:

(a) To promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation, as modes of settling labour or industrial disputes;
(b) To promote free trade unionism as an instrument for the enhancement of democracy and the promotion of social justice and development;
(c) To foster the free and voluntary organization of a strong and united labour movement;
(d) To promote the enlightenment of workers concerning their rights and obligations as union members and as employees;
(e) To provide an adequate administrative machinery for the expeditious settlement of labour or industrial disputes;
(f) To ensure a stable but dynamic and just industrial peace; and
(g) To ensure the participation of workers in decision and policy-making processes affecting their rights, duties and welfare.

"B. To encourage a truly democratic method of regulating the relations between the employers and employees by means of agreements freely entered into through collective bargaining, no court or administrative agency or official shall have the power to set or fix wages, rates of pay, hours of work or other terms and conditions of employment, except as otherwise provided under this Code" (emphasis supplied).

The long-term goals and objectives or "ends" of the policy vision are full employment, humane terms and conditions of employment, redistribution through just sharing in the fruits of production, reasonable returns on investments for employers, and equality and social partnership. These ends can be bundled into the single phrase "social justice". The intermediate goals and objectives - the "means" or "moving parts" - include the operative institutions toward the ends such as guarantees for the effective recognition, promotion, protection and regulation of freedom of association, trade union and collective bargaining rights, including the right to strike and lockout in accordance with law; workers' participation in policy- and decision-making; and shared responsibility and consensual modes of dispute resolution.

2.2 Historical timelines of the model

The model is rooted in the social justice and protection to labour clauses of the 1935 Constitution[15], which provided the State with the policy basis to intervene in the labour market through legislation. Compulsory arbitration through a Court of Industrial Relations (CIR) was initially the main mechanism to regulate employee-employer relations[16]. Laws were subsequently

[15]ART. II, Section 5 provides that "[t]he promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State." In addition, ART. IV, Section 6 provides that "[t]he State shall afford protection to labour, especially to working women, and minors, and shall regulate the relations between the landowner and tenant, and between labour and capital in industry and in agriculture. The State may provide for compulsory arbitration."
[16]Commonwealth Act No. 103 (1936), Section 1 of which vests the CIR with broad jurisdiction "to consider, investigate, decide and settle all questions, matters, controversies, or disputes arising between, and/or affecting employers and employees or labourers, and landlords and

passed to regulate trade unions[17] and working hours[18]. Emerging from World War II, the Philippines in 1948 joined the ILO, opening an important and influential channel for the State to assimilate international labour standards and practices in evolving a model of labour regulation while the economy was developing a nascent industrial base. In 1950, the New Civil Code was enacted, characterizing labour contracts as vested with public interest to be governed by special laws[19]. A minimum wage law followed in 1951, which also divested the CIR of jurisdiction to fix wages, thereby reducing its compulsory arbitration powers[20].

In 1953, the Philippines ratified ILO Convention Nos. 87 and 98. Within the same year, Congress enacted the Industrial Peace Act (IPA)[21]. The IPA introduced a model of industrial relations based on the National Labor Relations Act of the United States[22]. Embedded in the model was a philosophy of industrial relations pluralism where employers and management *vis-à-vis* workers and their unions, representing their own legitimate but separate and distinct interests and loyalties, were the pre-dominant sub-groups in employment relations. The IPA sought to eliminate the causes of industrial unrest, to promote industrial peace and to advance the general welfare, health and safety and the best interests of employers and employees through the responsible exercise of the rights to trade unionism and collective bargaining[23]. In order to encourage a truly democratic method of regulating employee-employer relations by means of agreements freely entered into by them through collective bargaining, it proscribed courts from exercising the power to set wages, rates of pay, hours of employment, or conditions of employment except in certain specified instances[24]. It reserved to the President of the Philippines the power to forbid strikes or lockouts in labour disputes that, in his opinion, involved industries indispensable to the national interest, and to certify such disputes to the CIR for compulsory arbitration[25]. The IPA also defined and prohibited acts of unfair labour practice, set up the office of the trade union registrar under the Department of Labor and Employment (DOLE), provided for the manner of selecting the union which shall be the exclusive bargaining agent for employees at the enterprise level, and provided the procedure for enterprise level collective bargaining, among others. The IPA formally shifted the model of regulating the employment relationship from compulsory arbitration to

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tenants or farm-labourers, and regulate the relations between them." See *Philippine Association of Free Labor Unions (PAFLU) and Majestic and Republic Theaters Employees Association v. Honorable Tan and REMA Inc., G.R. No. L-9115, 31 August 1956*.

[17]Commonwealth Act No. 213 (1936) defined and regulated legitimate labour organizations, and set up a registration and permit system administered by the Department of Labor. The law was also partly a response to what was then perceived as the emerging threat of communism.

[18]Commonwealth Act No. 444 (1939).

[19]New Civil Code of the Philippines. Article 1700 of the Code provides: "The relations between capital and labour are not merely contractual. They are so impressed with public interest that labour contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labour unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labour and similar subjects."

[20]Republic Act No 602 (1951).

[21]Republic Act No. 875, otherwise known as an Act to Promote Industrial Peace and for Other Purposes, June 17, 1953.

[22]Taft-Hartley Act of 1947, which superseded the Norris-La Guardia Act (Anti-Injunction Act) of 1932 and the Wagner Act (National Labor Relations Act) of 1935.

[23]Section 1 of Republic Act No. 875 provides: **"*Declaration of Policy*.** - It is the policy this Act:

(a) To eliminate the causes of industrial unrest by encouraging and protecting the exercise by employees of their right to self-organization for the purpose of collective bargaining and for the promotion of their moral, social, and economic well-being;

(b) To promote sound stable industrial peace and the advancement of the general welfare, health and safety and the best interests of employers and employees by the settlement of issues respecting terms and conditions of employment through the process of collective bargaining between employers and representatives of their employees;

(c) To advance the settlement of issues between employers and employees through collective bargaining by making available full and adequate governmental facilities for conciliation and mediation to aid and encourage employers and representatives of their employees in reaching and maintaining agreements concerning terms and conditions of employment and in making all reasonable efforts to settle their differences by mutual agreement; and

(d) To avoid or minimize differences which arise between the parties to collective bargaining by prescribing certain rules to be followed in the negotiation and administration of collective bargaining agreements and by requiring the inclusion in any such agreement of provisions for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements and other provisions designated to prevent the subsequent arising of such controversies".

[24]Idem, Section 7. This is incorporated in the Labor Code, Art. 211.B.

[25]Idem, Section 10. This is incorporated in the Labor Code as Art. 263 (g).

collective bargaining. It laid the foundation for trade unionism and collective bargaining to develop going into the 1960s.

In 1972, the Philippines was placed under martial law[26]. The industrial relations model under the IPA continued early into the regime. Subsequently, the 1935 Constitution was superseded by the 1973 Constitution. While the latter retained the social justice and protection to labour clauses of the former and did not *per se* prohibit freedom of association and the rights to trade unionism and collective bargaining, subsequent presidential decrees and executive orders restricted these rights, including the right to strike. It was under these circumstances that the Labor Code of 1974 was issued through a presidential decree[27]. Book V of the Code superseded the IPA but on its face, the industrial relations model it institutionalized was not different in structure and form from the one under the IPA. The Code affirmed the principles of freedom of association, trade unionism and collective bargaining. In fact, it was even more explicit on the policy goals of labour protection and social justice. However, it departed from the IPA model by introducing stricter preconditions and requirements on union formation, union registration, certification elections and the exercise of the right to strike. The Code also mandated a restructuring of the union movement along a "one industry, one union" concept. It further required government to approve the content of collective bargaining agreements (CBAs) as requisite for validity and enforceability. On dispute resolution, the CIR was abolished and replaced by an administrative tribunal, the National Labor Relations Commission (NLRC). In the name of general welfare and economic development, the Code also conferred upon the Secretary of Labor a wide latitude of discretion to assume jurisdiction or certify for compulsory arbitration collective disputes in industries which, in the opinion of the Secretary, were considered indispensable to the national interest. These characteristics gave the State broad authority to use labour laws in general, and trade union and collective bargaining laws in particular, as instruments of social and political control. For this reason, the free and democratic character of trade unionism and collective bargaining evolved under the IPA was greatly diminished. The long-term effect, still very much true at the present, was to create a State-centric system in which the State is the central player in industrial relations.

Authoritarian rule ended in 198[28]. The subsequent promulgation of the 1986 Provisional "Freedom" Constitution[29] set off a re-democratization process. Executive Order No. 111[30] amended provisions of the Labor Code that restricted the right to organize and to bargain. It affirmed the policy to foster the free and voluntary organization of a strong and unified labour movement,[31] lowered to 20 per cent the minimum membership requirement for union registration,[32] repealed the one-union, one-industry policy,[33] made certification elections automatic in non-unionized establishments and lowered the support requirement for a certification election in organized establishments,[34] liberalized the preconditions on the right to strike,[35] and strengthened the prohibition against employment of replacements during a strike[36]. In response to the increased incidence of strikes prior to and immediately following the collapse of authoritarian rule, Executive Order No. 126[37] was also issued reorganizing DOLE. Among others, Executive

[26]Martial law was declared by President Ferdinand E. Marcos through Proclamation No. 1081, September 21, 1972.
[27]Presidential Decree No. 442, 01 May 1974 (effective 01 November 1974), entitled "A decree instituting a Labor Code, thereby revising and consolidating labour and social laws to afford protection to labour, promote employment and human resource development and insure industrial peace based on social justice".
[28]Through the "People Power" Revolution, February 25, 1986.
[29]Proclamation No. 3, issued by President Corazon C. Aquino, March 25, 1986.
[30]Issued on December 24, 1986.
[31]Executive Order No. 111, Section 3, amending Art. 211 of the Labor Code.
[32]Idem, Section 4, amending Art. 234 (c) of the Labor Code.
[33]Idem, Section 5, amending Arts. 258, 239 and 241 of the Labor Code.
[34]Idem, Section 7, amending Arts. 257 and 258 of the Labor Code.
[35]Idem, Section 8, amending Arts. 264 (c) and (f) of the Labor Code.
[36]Idem, Section 9, amending Art. 265 (d) of the Labor Code.
[37]Issued on January 30, 1987.

Order No. 126 created the National Conciliation and Mediation Board (NCMB) to strengthen conciliation and mediation services in line with the principle of shared responsibility between workers and employers and the preferential use of voluntary modes of settling disputes.

In 1987, the current Constitution[38] became effective. It expanded the social justice and protection to labour clauses with explicit guarantees on the means to achieve these ends, specifically the rights of all workers to self-organization, collective bargaining and negotiations, peaceful concerted activities including the right to strike in accordance with law, participation in policy and decision-making processes affecting their rights and benefits as may be provided by law, and promotion of the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation[39].

In 1989, Congress amended Book V of the Labor Code,[40] formally institutionalizing into the Code the amendments introduced through Executive Order Nos. 111 and 126. The 1989 amendments also changed the term of a union as an exclusive bargaining representative from three to five years. The term of a CBA was similarly amended, subject to renegotiation prior to the end of the third year[41]. The NLRC was strengthened and its jurisdiction was expanded[42]. Subsequent amendments to Book V were also introduced in the direction of strengthening the right to self-organization and collective bargaining[43], rationalizing the functions and composition of the NLRC[44], strengthening tripartism[45], and strengthening conciliation-mediation as a voluntary mode of settlement for all labour cases[46]. In all, except for the labour dispute resolution system[47] and the existence of a wider range of codified minimum labour standards providing baselines for collective bargaining, the industrial relations model shaped by the 1986, 1989 and subsequent amendments to the Labor Code solidified the core elements and substantive characteristics, and is therefore essentially a brushed up version of the IPA model of 1953.

3. PART II : THE PHILIPPINE INDUSTRIAL RELATIONS MODEL

3.1 Policy context of the model: Labour market factors

Labour market factors such as a limited industrial base, restructuring of employment relationships brought about by globalization, the emergence of flexible and short-term employment arrangements, a large informal sector, chronically high unemployment, among others, undeniably affect how the industrial relations model works. The two most significant labour market factors affecting the model are the persistently dualistic nature of the labour market exemplified by a pronounced formal and informal sector dichotomy, as illustrated in Figure 1, and

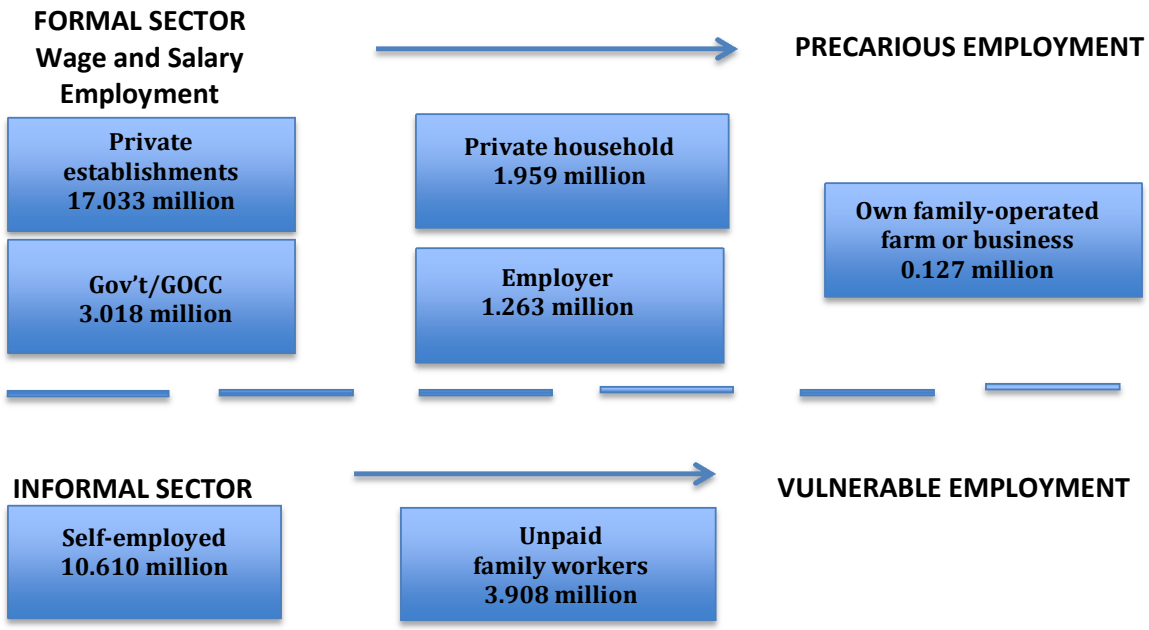
[38]The 1987 Constitution came into force on February 11, 1987.
[39]1987 Constitution, ART. XIII, Section 3.
[40]Republic Act No. 6715, March 21, 1989.
[41]Labor Code, Art. 253-A.
[42]*Idem,* Arts. 213-218.
[43]Republic Act No. 9481 (2007).
[44]Republic Act No. 9347 (2007). This Act amended Article 234 (requirements of registration) and added Article 234-A (chartering and creation of a local chapter). It also amended Articles 238 (cancellation of registration), 239 (grounds for cancellation of registration), 245, 256, 257, and 258.
[45]Republic Act No. 103095 (2013).
[46]Republic Act No. 103096 (2013).
[47]Even with the creation of the NLRC and the introduction of collective bargaining and voluntary arbitration, the IPA and the Labor Code did not do away with compulsory arbitration. As the Supreme Court observed in *Chung Fu Industries (Philippines) Inc., et al v. Court of Appeals, G. R. No. 96283, 25 February 1992,* "[a] lthough early on, Commonwealth Act 103 (1936) provided for compulsory arbitration as the state policy to be administered by the Court of Industrial Relations, in time such a modality gave way to voluntary arbitration. While not completely supplanting compulsory arbitration which until today is practiced by government officials, the Industrial Peace Act which was passed in 1953 as Republic Act No. 875, favored the policy of free collective bargaining, in general, and resort to grievance procedure, in particular, as the preferred mode of settling disputes in industry. It was accepted and enunciated more explicitly in the Labor Code, which was passed on November 1, 1974 as Presidential Decree No. 442, with the amendments later introduced by Republic Act No. 6715 (1989)".

sluggish employment creation characterized by a divergence in growth patterns between gross domestic product (GDP) and employment (Chart 1).

A worker must be under a formal employee-employer relationship to be within the universe of the model. Historically, the Philippines always had a large informal sector consisting of low skilled and in many instances unpaid workers. Over the last decade, the informal sector accounted for more than one-third of the country's employed labour force. Since workers in this sector are not covered by an employment relationship, the model does not accommodate their membership in trade unions or participation in collective bargaining and other policy and decision-making processes.

The model also tends to exclude large segments of the employed. As of 2013, there were 944,987 private enterprises nationwide, only less than 5 per cent of which have 20 or more employees[48]. The model applies the same rules and requires the same formalities and documents equally to all enterprises, regardless of size. The requirements effectively filter out employees in smaller enterprises, again inevitably limiting the universe of organizing to bigger enterprises. On the other hand, while there has been an increase in wage and salary employment, there is also a trend toward more precarious forms of employment such as subcontracting arrangements, temporary or short-term employment, and part-time employment. Since the model is premised on regular employment, higher incidence of precarious employment further restricts the organizing universe.

Figure 1. Labour market dualism, 2013[49]



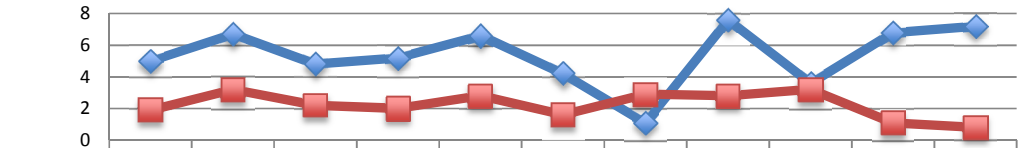
The other critical labour market characteristic is that in spite of high GDP growth, the economy has not correspondingly generated more quality employment in the form of more regular

[48]28,645 with 20-49 employees (3.03 per cent); 8,539 with 50-99 (0.904 per cent); 4,095 with 100-199 (0.433 per cent); and 4,011 with 200 and above (0.435 per cent). More than one-half of these enterprises were in the three most urbanized regions in the country. 212,351 in National Capital Region (NCR); 145,502 in CALABARZON (Region IV-A); and 105,576 in Region III (Central Luzon).

[49]Bureau of Labor and Employment Statistics-Philippine Statistics Authority (BLES-PSA), Current Labor and Employment Statistics, 2014.

jobs. The divergence in growth patterns between GDP and employment from 2008 to 2013 is shown in Chart 1. It can be noted that in 2008, 2012 and 2013, there was high GDP growth but low employment creation though some of the new jobs appeared to be of higher quality (i.e., wage and salary employment). Conversely, where there was low GDP growth, there was high employment creation but mainly in jobs of lower quality (i.e., part-time jobs in 2009). Apart from underscoring the structural nature of the employment problem, the divergence further constricts the universe for organizing and collective bargaining.

Chart 1. Growth in GDP and employment, 2003-2013 (in %)



	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
GDP	5	6.7	4.8	5.2	6.6	4.2	1.1	7.6	3.6	6.8	7.2
EMP	1.9	3.2	2.2	2	2.8	1.6	2.9	2.8	3.2	1.1	0.8

3.2 Collective bargaining and trade union structure

The defining characteristic of the model[50] is a collective bargaining and union structure decentralized at the enterprise level. Although the rules implementing the Labor Code speaks of multi-employer bargaining[51], actual collective bargaining takes place only at an enterprise which is

[50]See also Benedicto Ernesto R. Bitonio Jr., "Industrial relations and collective bargaining in the Philippines," p. 15, Working Paper No. 41, Industrial and Employment Relations Department and ILO Regional Office for Asia and the Pacific, ILO: Geneva (2012).

[51]D.O. No. 40-03, Sections 5 and 6, provides:

Section 5. When multi-employer bargaining available. - A legitimate labour union(s) and employers may agree in writing to come together for the purpose of collective bargaining, provided:

(a) only legitimate labour unions who are incumbent exclusive bargaining agents may participate and negotiate in multi-employer bargaining;

(b) only employers with counterpart legitimate labour unions who are incumbent bargaining agents may participate and negotiate in multi-employer bargaining; and

(c) only those legitimate labour unions who pertain to employer units who consent to multi-employer bargaining may participate in multi-employer bargaining.

Section 6. Procedure in multi-employer bargaining. - Multi-employer bargaining may be initiated by the labour unions or by the employers.

(a) Legitimate labour unions who desire to negotiate with their employers collectively shall execute a written agreement among themselves, which shall contain the following:

1) the names of the labour unions who desire to avail of multi-employer bargaining;

2) each labour union in the employer unit;rs

3) the fact that each of the labour unions are the incumbent exclusive bargaining agents for their respective employer units;

4) the duration of the collective bargaining agreements, if any, entered into by each labour union with their respective employers. Legitimate labour unions who are members of the same registered federation, national, or industry union are exempt from execution of this written agreement.

(b) The legitimate labour unions who desire to bargain with multi-employers shall send a written notice to this effect to each employer concerned. The written agreement stated in the preceding paragraph, or the certificates of registration of the federation, national, or industry union, shall accompany said notice. Employers who agree to group themselves or use their existing associations to engage in multi-employer bargaining shall send a written notice to each of their counterpart legitimate labour unions indicating their desire to engage in multi-employer bargaining. Said notice shall indicate the following:

1) the names of the employers who desire to avail of multi-employer bargaining;

2) their corresponding legitimate labour organizations;

3) the fact that each corresponding legitimate union is any incumbent exclusive bargaining agent;

4) the duration of the current collective bargaining agreement, if any, entered into by each employer with the counterpart legitimate labour union.

(c) Each employer or concerned labour union shall express its willingness or refusal to participate in multi-employer bargaining in writing, addressed to its corresponding exclusive bargaining agent or employer. Negotiations may commence only with regard to respective employers and labour unions who consent to participate in multi-employer bargaining;

an "organized establishment," meaning one where there exists a recognized or certified union with the status of a sole and exclusive bargaining agent (SEBA) operating in an appropriate bargaining unit[52]. This structure has three main premises. First, a person must be employed to exercise the right to organize and to bargain[53]. Second, an employee must belong to an appropriate bargaining unit of his or her employer to be represented in collective bargaining[54]. And third, the appropriate bargaining unit must be represented by a union with legal personality and with SEBA status.

The decentralized collective bargaining structure predisposes collective bargaining practices toward "economic" or "bread and butter" unionism where the primary objective is for enterprise unions to win economic concessions directly from the employer, specifically on wages and other economic or welfare benefits for members of the enterprise bargaining unit. Enterprise unions have little incentive or opportunity to pursue interests outside their own employer or bargaining unit.

Mirroring the collective bargaining structure, the union structure is also decentralized although enterprise unions have the right to form or affiliate with federations and trade union centers[55]. Unions are thus structured into: (a) the enterprise union whose locus is an appropriate bargaining unit within the enterprise; (b) the federation or national union which must have at least ten enterprise unions all of which must have SEBA status in their respective bargaining units;[56] and (c) the trade union center which is a combination of two or more federations or national unions.[57]

A federation or trade union center cannot bargain directly with the employer. It can only do so in a representative capacity if authorized by the enterprise union. In this regard, the role that the model assigns to federations, national unions and trade union centers is to provide assistance to enterprise unions in collective bargaining, among others, and therefore engage in economic unionism. Another role that the model assigns to them is a political role, that is, to advocate for workers' causes outside the enterprise either through legislation, administrative policies and regulations or government programs. Participation at this level is through tripartite and other social dialogue mechanisms vested with policy-making, decision-making, rule-making or recommendatory or advisory powers. Representatives are usually chosen by government from organizations deemed as being the most representative among employers' and workers' organizations.

(d) During the course of negotiations, consenting employers and the corresponding legitimate labour unions shall discuss and agree on the following:
1) the manner by which negotiations shall proceed;
2) the scope and coverage of the negotiations and the agreement; and
3) where appropriate, the effect of the negotiations on current agreements or conditions of employment among the parties.

[52]Department Order (D.O.) No. 40-3, Implementing Rules of Book V of the Labor Code, Rule I, Section 1 (ll). The SEBA is the labour organization designated or selected by the majority of the employees in an appropriate bargaining as the exclusive representative of the employees in such unit for the purpose of collective bargaining (Labor Code, Article 255).

[53]Labor Code, Art. 245.

[54]D.O. No. 40-3, Rule I, Section 1 (d) defines a "bargaining unit" as a group of employees sharing mutual interests within a given employer unit, comprised of all or less than all of the entire body of employees in the employer unit or any specific occupational or geographical grouping within such employer unit.

[55]Although policy promotes a unified union movement, the model itself accommodates union pluralism. This explains the multiplicity of federations and trade union centers in the industrial relations landscape. As of 2013, there were 145 registered federations and trade union centers nationwide.

[56]Labor Code, Article 234, as amended by R. A. No. 9481, in relation to D.O. No. 40-3, Rule III, Section 2.B. Labour organizations operating within an identified industry may also apply for registration as a federation or national union within the specified industry.

[57]Reference to trade union centers was included in the Labor Code, Article 234, through R.A. No. 9481. Neither the law nor D.O. No. 40-3 provides specific requirements for the registration of a trade union center. Prior to R.A. No. 9481, trade union centers were already recognized and their voluntary formation was generally recognized as an inherent right of federations under general principles of freedom of association.

In sum, although the model institutionalizes three levels of unions, it is only at the enterprise level where collective bargaining in its pure sense really takes place, as illustrated in Figure 2.

3.3 Core elements and specific characteristics of the model

The core elements and characteristics or "moving parts" of the model, which embody inter-related and inter-locking principles, are specified in Book V of the Labor Code and its implementing rules and regulations. In Table 1, these parts are grouped under four core elements, namely: (a) recognition, promotion, protection and regulation of freedom of association and the right to organize; (b) recognition, promotion, protection and regulation of collective bargaining rights; (c) structure, process, scope and content of collective bargaining; and (d) labour dispute resolution system.

Figure 2. Trade union and collective bargaining structure

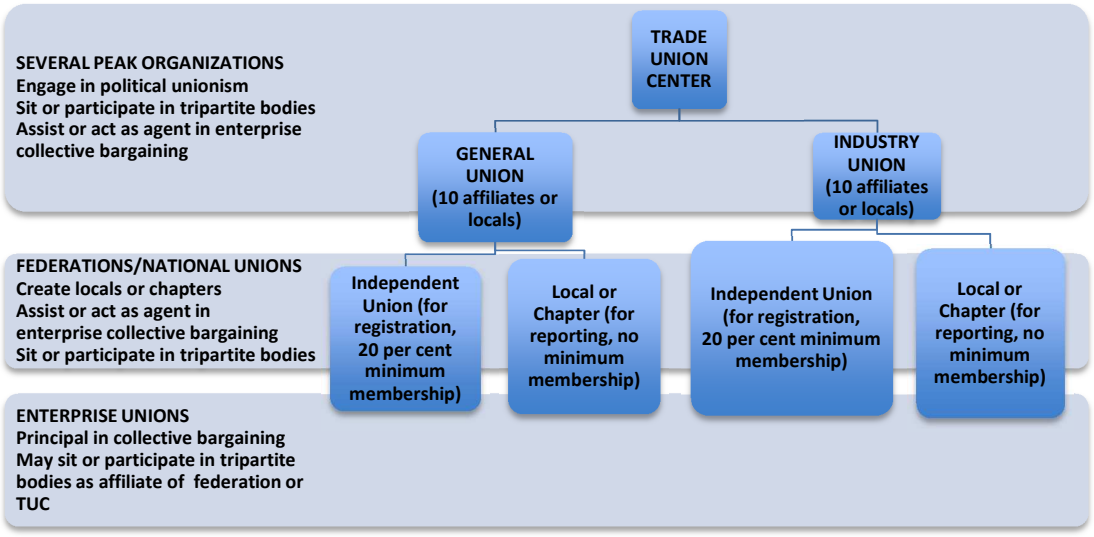


Table 1. Core elements, principles and characteristics of the Philippine industrial relations model

Core element	Characteristics
First element: Recognition, promotion, protection and regulation of freedom of association and the right to organize	• Enterprise-based and decentralized union structure: ✓ Union must be based in a specific employer unit, and should be composed of employees of an appropriate bargaining unit. ✓ A bargaining unit is a group of employees who share common interests. ✓ There may be more than one bargaining unit in an employer unit. ✓ There may be more than one union within a bargaining unit. • A worker must be an employee to join a union or be part of the appropriate bargaining unit:

	✓ Every employee may form or join a union in the appropriate bargaining unit on the first day of his employment. ✓ Eligibility to form join a union is subject to preconditions and qualifications. • Employment classification – by legal mandate, supervisors and rank and file employees must form separate unions. Managerial employees and confidential employees are not eligible for membership. • Employment category - in practice, only regular employees are included in a bargaining unit. Casual employees, employees for a fixed period, probationary employees, managerial staff, and other employees under non-standard or non-regular employment arrangements are excluded. • Union security provisions such as union shop and maintenance of membership shop may be entered into by the parties and is expressly allowed by law. • Legal requirements for union to acquire legal personality and exercise union rights. ✓ Minimum membership: for independent unions, at least 20 per cent of the employees of the bargaining unit where the union seeks to operate must be members. ✓ Unions acquire legal personality in two ways. • Through independent registration, in which the union has to show documentary proof that at least 20 per cent of the employees of the bargaining unit are its members[58]. • Through direct chartering by becoming a local or chapter of a legitimate federation or national union, but not by a trade union center,[59] and subsequently reporting this fact to the DOLE. Local or chapter not subject to a minimum membership requirement[60]. • State-administered union registration system: ✓ Ministerial process, subject to compliance with documentary requirements. ✓ Independent unions must be registered to acquire legal personality. But federations can create a direct chapter or local, subject to reporting to the union registry. • Union structure is decentralized, with right to affiliate or federate: ✓ Unions are formed mainly for collective bargaining on terms and conditions of employment. ✓ Enterprise unions are free to form or join federations and trade union centers. Enterprise unions operating within an identified industry may also federate with each other.[61] • Union activities are regulated: ✓ Protection of union members on intra-union matters through statutory rights and terms conditions of membership. ✓ Annual reporting requirements on officers, members and funds. ✓ State has power to audit union funds, subject to certain preconditions. ✓ Prior government approval of receipt by a union of foreign assistance. ✓ Specific grounds for cancellation of union registration by DOLE, subject to appeal to the courts.

	• Protection against anti-union discrimination, coercion and unfair labour practices (ULPs) for unions, employees and employers. ULP is a ground for strike or lockout, subject to statutory preconditions. • Law is for a unified labour movement. ✓ Formal recognition of right to federate or form central organizations for unions; informal recognition for employers. ✓ Unification into federations and trade union centers is voluntary. • Representation of workers and employers in tripartite bodies mandated by laws. Choice of representatives comes from workers' and employers' organizations which government traditionally consider as "most representative," not through an election.
Second element: Recognition, promotion, protection and regulation of collective bargaining rights	• Enterprise-based bargaining unit structure. Law does not provide for industry or national bargaining structures. • Administrative rules recognize the possibility of multi-employer bargaining but there has been no actual experience in this type of bargaining. • Employee must belong to an appropriate bargaining unit: ✓ Policy preference is for larger bargaining units ("one employer unit, one bargaining unit"). ✓ Constitution of appropriate bargaining units may be based on employee classification, will of the employees, or commonality or mutuality of interests among them. • A union acquires the right to represent employees once it has the status of SEBA of the employees in the bargaining unit where it seeks to operate: ✓ SEBA must have support of majority of the employees in the appropriate bargaining unit. ✓ Majority support expressed thru certification election conducted by DOLE or voluntary recognition by employer. • Nature of certification election: democratic, fact-finding and non-adversarial proceeding where the employer is a by-stander. • In spite of its non-adversarial nature, issues arising from a certification election may be litigated, particularly the following: ✓ Constituency of the bargaining unit as determined through inclusion-exclusion proceedings prior to election. ✓ Employer has legal right to question an employee's eligibility to be included in the bargaining unit. • Term of representation of recognized or certified union is five years. During the term, certified union's representation status cannot be challenged if it is able to conclude and register a CBA, except within 60 days prior to expiration of the term.

[58]Labor Code, Article 234, as amended by R. A. No. 9481, in relation to D.O. No. 40-3, Rule III, Section 2.A and Rule IV.
[59]In *SMCEU-PTGWO v. SMPPEI-PDMP, G. R. No. 171153, September 17, 2007,* the Supreme Court ruled that a trade union center cannot create a local.
[60]Labor Code, Article 234 in relation to in relation to D.O. No. 40-3, Rule III, Section 5.
[61]See Labor Code, Arts. 234-239; D. O. No. 40-03, Rule III, Section 2.B.

Third element: Structure, process, scope and content of collective bargaining	• Decentralized and enterprise/bargaining unit-based process and structure. • Formal recognition of mutual duty of parties to bargain in good faith, with guidelines on bargaining procedure. Compulsory to bargain, but not compulsory to agree. • Subjects of bargaining: ✓ Economic items: terms and conditions of employment (economic and distributive bargaining); welfare benefits. ✓ Political items: scope and constituency of the bargaining unit; job and union security clauses. ✓ Dispute settlement mechanism. • Limitation on bargaining: minimum labour standards cannot be waived or bargained away. • Regulation of bargaining behaviour: ✓ Protection against bad faith bargaining and related forms of ULPs. ✓ ULPs and bargaining deadlocks are the two recognized grounds for strike or lockout, subject to statutory preconditions. ✓ ULP may be subject to administrative sanctions and criminal prosecution. • Periodic nature of bargaining: term of CBA is five years, subject to renegotiation prior to the third year. • Limitations on State intervention in collective bargaining: ✓ Rule: State should not intervene. ✓ If State intervenes, consensual modes of dispute resolution preferred. ✓ Compulsory arbitration in national interest cases. • Effect of CBA: Law between the parties. Covers all employees in the bargaining unit, non-extendible to workers outside the bargaining unit.
Fourth element: Dispute settlement	• Classification of disputes: ✓ Interest disputes (i.e., collective bargaining deadlocks) ✓ Rights disputes (ULPs including gross violation of CBA provisions, or implementation or interpretation of CBA provisions). ✓ Special types of disputes (i.e., certification elections and those arising from the registration of unions) • Multiple entry points of disputes thru different dispute resolution agencies with specialized areas of jurisdiction depending on the type of dispute. • Shared responsibility is the preferred approach in dispute resolution; sequential principles: ✓ Parties to resolve their dispute thru negotiation and consensus using the grievance mechanism. ✓ Outside the enterprise, preferred mode is conciliation and mediation. ✓ If conciliation and mediation is not successful, parties may choose voluntary arbitration. • Compulsory arbitration is provided (in practice, it is the dominant mode); two types: ✓ Ordinary compulsory arbitration thru the NLRC.

	✓ Extraordinary compulsory arbitration thru the Secretary's police power to assume jurisdiction over national interest cases or to certify it to the NLRC. • Regulation of the right to strike and lockout: ✓ Grounds limited to bargaining deadlocks and unfair labour practices ✓ Legal requirements and preconditions for strike and lockout ✓ Consequences for non-compliance with legal preconditions and requirements. • Right to take peaceful concerted actions is a protected right. • Courts are prohibited from issuing strike injunctions. This rule is subject to: ✓ Power of the Secretary of Labor to issue return to work order in cases involving the national interest ✓ Obligation of parties to observe the status quo ante bellum (which means the striking workers must return to work or the locking out employer must admit the workers back to work) when the dispute is submitted to arbitration (whether compulsory or voluntary) ✓ Power of the NLRC to enjoin illegal acts on the occasion of a strike or lockout. • Decisions on all types of disputes subject to multi-level administrative appeals and judicial review. • Decisions on certification election cases, although the proceeding is described as non-adversarial, is likewise subject to multi-level administrative appeals and judicial review on issues relating to determination of scope or constituency of the bargaining unit, conduct of the certification election, or choice of the collective bargaining agent: ✓ Law allows two cycles of appeal and judicial review (double appeal procedure) on a certification election case – the first based on the order to hold an election, and the second on the order certifying the results of the election. ✓ Pending resolution of legal issues arising from a certification election, no collective bargaining can proceed.

3.4 Tripartite and social dialogue mechanisms above the enterprise level

Under the broad framework of tripartism and social dialogue, there are various mechanisms or bodies above the enterprise where workers' and employers' organizations can participate in policy- and decision-making as well as in political processes on matters affecting them. Sectoral representation in these bodies is usually through federations, national unions and trade union centers for workers, and through organizations of employers like the Employers' Confederation of the Philippines (ECOP), the Philippine Chamber of Commerce (PCC), foreign chambers of commerce, and other employer- or business-affiliated organizations for employers. The influence or power vested in sectoral representatives to these bodies varies. For instance, the Regional Tripartite Wage and Productivity Boards (RTWPB) issues minimum wage orders and as such exercise a delegated legislative power. The National Wage and Productivity Commission (NWPC) is also a tripartite body. When it resolves appeals on wage orders issued by the RTWPBs, it exercises a quasi-adjudicatory power; when it issues guidelines on wage fixing to be followed by the RTWPBs, it exercises policy-making functions. Governing Boards or Commissions in which

there is tripartite representation, such as the Technical Education and Skills Development Authority (TESDA), the Philippine Overseas Administration (POEA), the Overseas Workers Welfare Administration (OWWA), Employees Compensation Commission (ECC) and even the NLRC, exercise policy-making functions in their respective spheres of competence. The National Tripartite Industrial Peace Council (TIPC), initially established through an executive order but recently strengthened through legislation, has recommendatory functions to assist the DOLE Secretary in its policy- or rule-making functions.

Further, some federations and trade union centers have tried reconstituting themselves as political parties under the party-list system to gain seats in the House of Representatives. The successful ones were those which coalesced with other cause-oriented organizations, thus forming multi-sectoral parties rather than pure labour parties. In the absence of a labour party in the political sphere, representation through a multi-sectoral party and conventional lobbying remain as the only venues that allow federations, national unions and trade unions a semblance of political engagement. But while these organizations can be instruments of coordination, they oftentimes compete with each other and with other non-State actors for access to mechanisms of political participation. With a weak membership base, competition with each other, and lack of coordination, the risk of diluting rather than strengthening their influence is high.

In terms of output, some of the mechanisms described are empowered to fix or recommend terms and conditions of employment applicable to workers and employers in general (such as minimum wages through the tripartite wage boards and the rules implementing the Labor Code processed through the TIPC) or to more particular sectors (such as the rules on security agencies and on work in the construction industry, similarly processed through the TIPC). These mechanisms have evolved their own specialized rules and are not bound by the rules of enterprise level collective bargaining formally institutionalized under the current model. Further, while principles of freedom of association and collective bargaining are sometimes invoked in these processes, the ultimate decision-maker with respect to the outputs is still the State. To the extent that decision-making remains State-centric, the interactions and outputs of these mechanisms cannot be classified as collective bargaining outside the enterprise level. Nevertheless, their effects on enterprise collective bargaining cannot be discounted. If the State is prepared to adjust its current role, as discussed below, and the role of the social partners correspondingly expands, these mechanisms could eventually serve as platforms from which the social partners can graduate to higher levels of collective bargaining.

3.5 Role of the State

DOLE, together with the offices and agencies under it,[62] is officially the administrator of the model. But what is the actual role of the State in the model? The policy instruments embedded into the model are instructive. While the overt policy assigns the State the specific role of encouraging, promoting and facilitating collective bargaining directly between employers and workers, the core elements and characteristics of the model indicate that the State's role is much more pervasive than what the overt policy suggests[63]. As shown in Table 1, the State actually employs a mix of policy instruments. The pre-eminent instrument is actually ***regulation*** through statutory minimum terms and conditions of employment, requirements and preconditions for union formation and registration, certification of representatives, organization of the bargaining process and norms of bargaining behavior. Where regulations give rise to conflicts and disputes, the State ***provides*** a labour dispute resolution mechanism that offers a range of consensual modes

[62]Includes the Office of the DOLE Secretary, the National Labor Relations Commission (NLRC), the National Conciliation and Mediation Board (NCMB), the Bureau of Labor Relations (BLR), and DOLE's Regional Offices.
[63]See Labor Code, Book V and its Implementing Rules and Regulations, DOLE Department Order No. 40, Series of 2003.

of resolution (collective bargaining, conciliation, mediation and voluntary arbitration) as well as compulsory arbitration. ***Promotion*** is employed mainly through workers' and employers' education.

The existing policy instruments ensure end-to-end State presence in the organizing and collective bargaining spectrum. For example, through the classifications of employment, the State predetermines who may or may not join unions. Through the registration system, it decides when a union may acquire legal status. Through certification election procedures, it determines the acquisition of bargaining rights, resolving issues arising from this determination through its own predetermined rules. Through preconditions for strikes and lockouts, it regulates the use of negotiating options for both workers and employers. Through the arbitration mechanism, particularly through compulsory arbitration, it can impose its solution as a substitute to the consent of the parties. And through the CBA registration system, it regulates when a CBA binds external parties.

Bureaucratic steps and procedures may have the explicit objective of facilitating the organizing and bargaining process. But these can also have the practical effect of serving as legalized instruments of intervention and social control. The impression is that the exercise of organizing and bargaining rights are guaranteed because procedural democracy is in place and the State is ever present. But this kind of presence may actually be creating a drag on the substantive democratic act of bargaining between the parties. It also re-inforces a culture of dependency that encourages the parties, whenever convenient, to toss to the State the resolution of issues that could be best addressed at the bargaining table. In sum, the role that the model assigns to the State is substantially regulative, interventionist and paternalistic, effectively stunting the role, responsibility and freedom of action of the social partners. A key strategic issue and challenge in modernizing and strengthening the model, therefore, would be how to transform the role of the State into a truly promotional and facilitative role.

4. PART III: POLICY PERFORMANCE: OUTPUTS, OUTCOMES AND IMPACTS OF THE MODEL

Two primary measures of the model's performance are trade union density and collective bargaining coverage rate[64]. The Philippines has always been a low-coverage country, both in terms of union and collective bargaining coverage. Present and historical statistical data, measured narrowly and comprehensively, show this characteristic[65].

[64]Various analyses, as for instance the *Global Wage Report 2008/2009*, make distinctions between high-coverage (unionization rates of more than 40 per cent) and low-coverage countries (unionization rates below 40 per cent). Cited in Bitonio, *idem*, p. 17.

[65]See Hayter and Stoevska, *supra*. On trade union density, the analysis is guided by the following formulas:

$$\text{Narrow density rate} = \frac{\text{Union members in paid employment}}{\text{Total number of employees}} \times 100$$

$$\text{Or} = \frac{\text{Total union members}}{\text{Total number of employees}} \times 100$$

$$\text{Comprehensive density rate} = \frac{\text{Union members}}{\text{Total employed}} \times 100$$

The analysis on collective bargaining coverage (CBC) is guided by the following formulas:

$$\text{Narrow CBC rate} = \frac{\text{Workers in paid employment covered}}{\text{Total number of employed}} \times 100$$

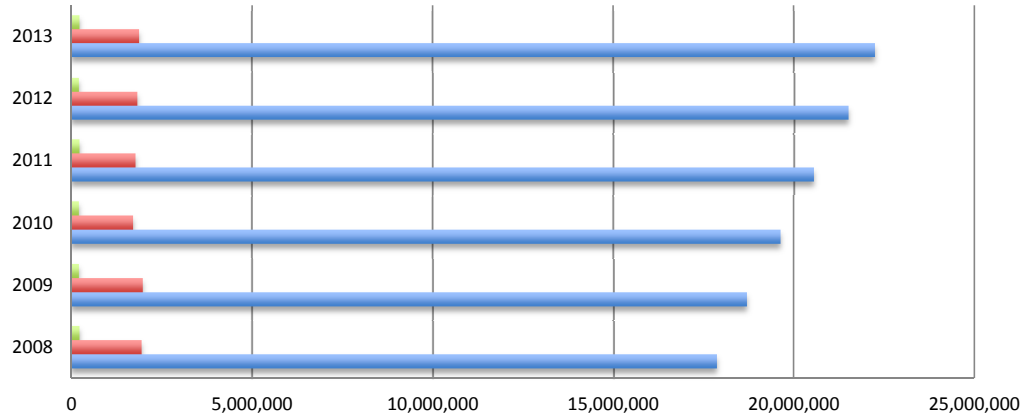
$$\text{Comprehensive CBA rate} = \frac{\text{Workers covered}}{\text{Total employment}} \times 100$$

4.1 A snapshot of the present

Chart 2 shows a persistently wide divide between union membership and collective bargaining coverage levels. In 2008, only one out of ten workers was a union member. Similarly, only one out of ten union members was covered by a CBA. In 2013, less than nine out of 100 workers were union members, and only 14 out of 100 members were covered by CBAs.

Union and collective bargaining-related activities were concentrated in the urbanized regions where wage and salary employment is larger. In 2013, 59 per cent of all enterprise-based private sector unions accounting for about 76.8 per cent of total union membership were in the NCR[66]. Organizing for new unions was also limited to the urbanized regions, again mostly in the NCR. No recent union activity was recorded among less urbanized regions[67]. Fewer certification elections are also being filed year on year. The total number of med-arbitration cases filed in 2013, mostly involving petitions for certification elections, was the lowest in recent years[68]. Almost all of the newly filed med-arbitration cases were concentrated in the NCR, Region III and CALABARZON[69].

Chart 2. Trade union membership and collective bargaining coverage among wage and salary workers, 2008-2013



	2008	2009	2010	2011	2012	2013
CBC	227,403	225,167	212,054	227,620	219,899	228,000
MEM	1,941,727	1,985,467	1,713,590	1,778,824	1,833,341	1,884,432
W&S	17,846,000	18,681,000	19,626,000	20,538,000	21,492,000	22,247,000

Source: BLES-PSA, 2014 Yearbook of Statistics

[66]In 2013, 9,898 unions (59 per cent of all enterprise-based private sector unions) with 1.069 members (76.8 per cent) were in NCR; 2,122 unions with 180,000 members in CALABARZON; and 1,068 unions with 98,000 members in Central Luzon.

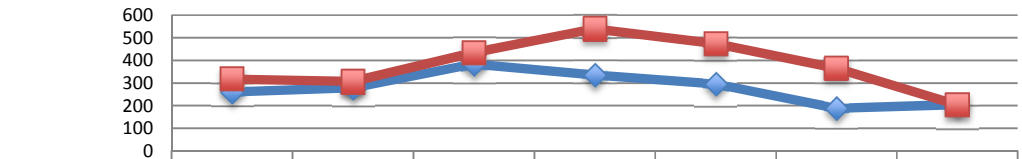
[67]Of the new unions organized, 99 new unions with 4,447 members were registered in 2013, mostly in NCR. There was very little new organizing activity in Regions IV-B, X and XI (one new union each), while there was no newly registered unions in CAR and Regions I, II, VIII, IX, CARAGA and ARMM.

[68]211 original Med-Arb cases, mostly PCEs, were in the dockets in 2013. The number of PCEs has been declining, from 517 in 2005, 489 in 2006, and 312 in 2010.

[69]There were 195 newly filed original med-arbitration cases in 2013. Of these, 116 were filed in the NCR, 21 in Region III, and 14 in CALABARZON. No cases in CAR and Regions I, II, III, IV-B, IX and X.

The 2007 amendments to the Labor Code[70] allowed direct formation of chapters by federations with no required minimum membership[71] and affirmed the by-stander role of management in the conduct of certification elections[72]. However, these did not have a significant positive effect in encouraging organizing activities for new unions and bargaining for new CBAs, as shown in the immediately succeeding years (Chart 3).

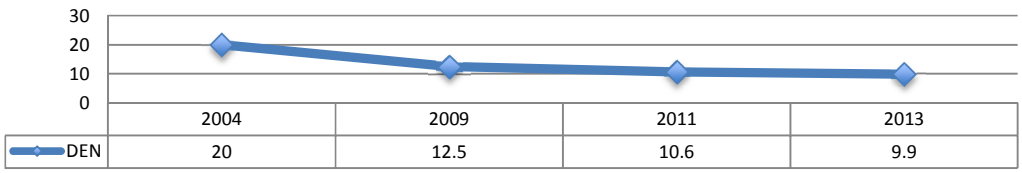
Chart 3. New unions and CBAs, 2008-2013



	2007	2008	2009	2010	2011	2012	2013
New Unions	260	279	384	335	297	189	205
New CBAs	318	307	435	540	475	365	204

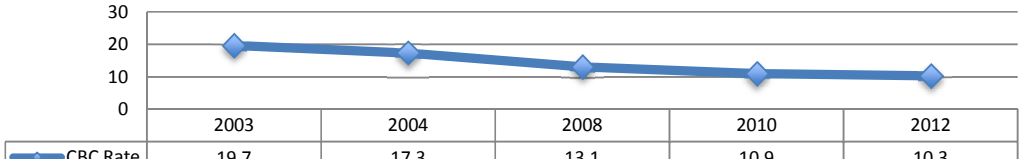
The sluggishness in new union organizing and collective bargaining activities further brought down trade union density and the collective bargaining coverage rates, which went down to 9.9 per cent in 2013 (Chart 4) and 10.3 per cent in 2012 (Chart 5) respectively[73].

Chart 4. Trade union density, 2004-2013 (in %)



	2004	2009	2011	2013
DEN	20	12.5	10.6	9.9

Chart 5. Collective bargaining coverage rate, 2003-2013 (in %)



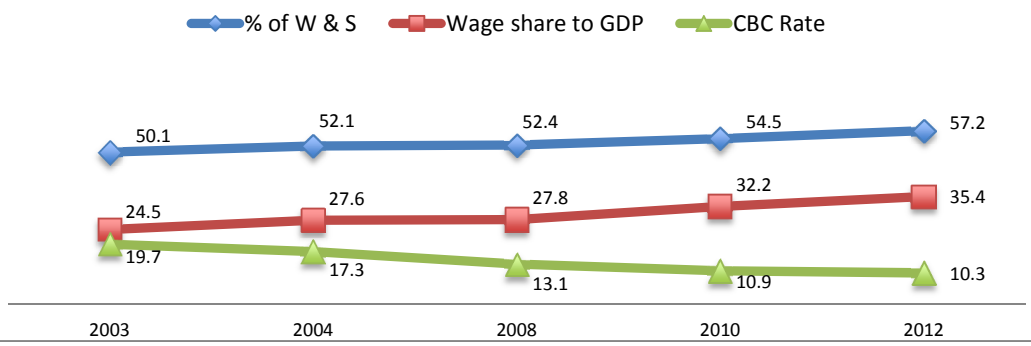
	2003	2004	2008	2010	2012
CBC Rate	19.7	17.3	13.1	10.9	10.3

In theory, wage share to GDP can be an indicator of the distributional impact of collective bargaining. However, considering that collective bargaining coverage rates are low, drawing a correlation would be more academic than real. Chart 6 shows that collective bargaining coverage rates decreased in spite of the expansion of the wage and salary sector. This is consistent with

[70]R.A. No. 9481.
[71]Labor Code, Art. 234-A, as added by R. A. 9481.
[72]Labor Code, Art. 258-A, as added by R.A. 9481.
[73]BLES-PSA, Decent Work Statistics (DeWS) 2015. DeWS uses a narrow trade union density and collective bargaining coverage rate approach.

observations that growth in employment in this sector was of the precarious and short-term nature, and does not expand the base of organizing and collective bargaining. On the other hand, wage share to GDP increased in spite of falling collective bargaining coverage rates.

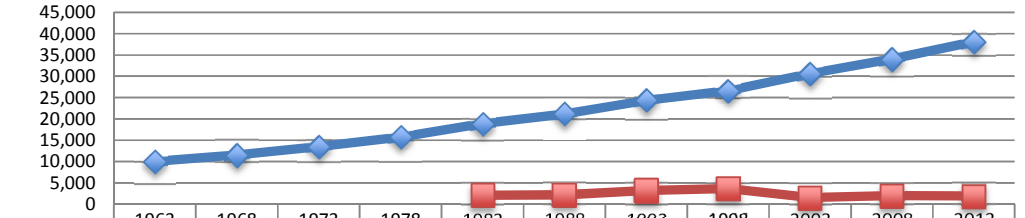
Chart 6. Wage and salary workers to total employment, wage share to GDP, and collective bargaining coverage rate (in %), 2003-2012



4.2 Historical performance

Data over a longer time horizon confirm that policy performance in terms of trade union density and collective bargaining coverage rates is indifferent to employment level and to growth in wage and salary employment. Chart 7 shows the movements in level of employment and trade union membership at five-year intervals over a 30-year period starting from 1983. It can be seen that employment level maintained an upward trajectory, more than doubling from 18.8 million to 38.1 million over the period. Trade union membership moved between 1.8 million and 3.6 million from 1983 to 1998 before declining to its lowest level in 2003[74].

Chart 7. Employment and trade union membership, 1983-2013 (in '000)

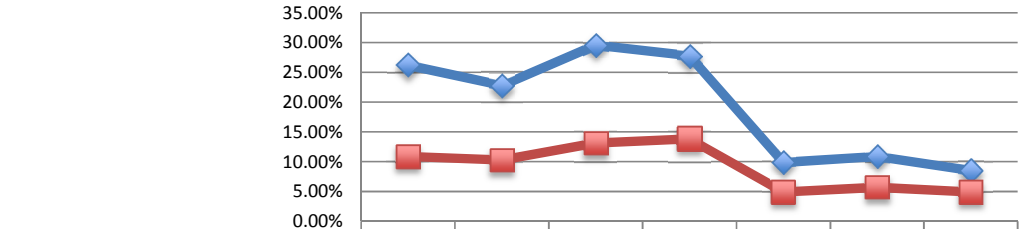


	1963	1968	1973	1978	1983	1988	1993	1998	2003	2008	2013
EMP	10,040	11,476	13,450	15,768	18,898	21,205	24,382	26,631	30,635	34,089	38,118
MEM					2,057	2,180	3,196	3,686	1,516	1,941	1,884

[74]The highest level of trade union membership was at 3,849,976 recorded in 2001. The levels of union membership before 2003, including the highest level reached in 2001, should be taken with caution for probably being overstated. The numbers are based on claimed membership by the unions themselves as reflected in their annual administrative reports to DOLE. They are accumulated and aggregated annually over several years with the possibility of double counting and without subtracting the membership of unions becoming inactive. Updating and cleansing of the administrative data was done after 2001, which explains the abrupt drop in both membership level and density rate in 2003.

With increase in employment levels outpacing union growth, trade union density rates also declined (Chart 8)[75].

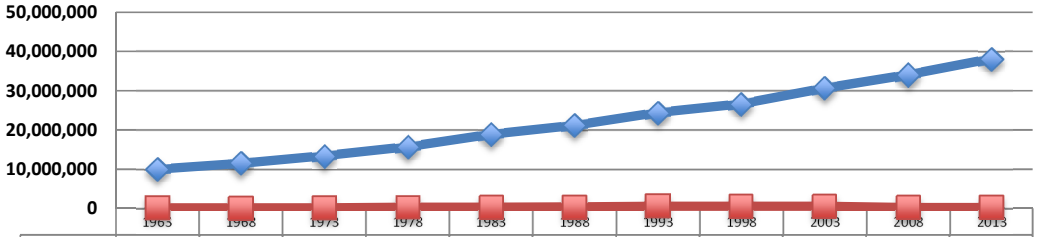
Chart 8. Narrow and comprehensive union density rates, 1983-2013



	1983	1988	1993	1998	2003	2008	2013
Narrow Union Density Rate	26.20%	22.80%	29.60%	27.80%	9.90%	10.90%	8.50%
Comprehensive Union Density Rate	10.88%	10.28%	13.11%	13.84%	4.95%	5.69%	4.94%

The data also reveal the absence of correlation between increase in the levels of employment, including formal or wage and salary employment, and wider collective bargaining coverage (Chart 9). Data at five-year intervals from 1963 to 2013 show that increase in collective bargaining coverage moved within a much narrower band than increase in employment levels. The widest coverage recorded during these intervals was in 1993 and the lowest was in 1968. Coverage in 2013 is the lowest since 1978 and appears to be receding toward the 1963 level. Significantly, while labour market dualism has always characterized the economy, the number of workers in formal or wage and salary employment has increased over the last 50 years. Employment in manufacturing, the sector with traditionally higher union and collective bargaining concentration, also expanded. Nonetheless, collective bargaining coverage remained relatively flat.

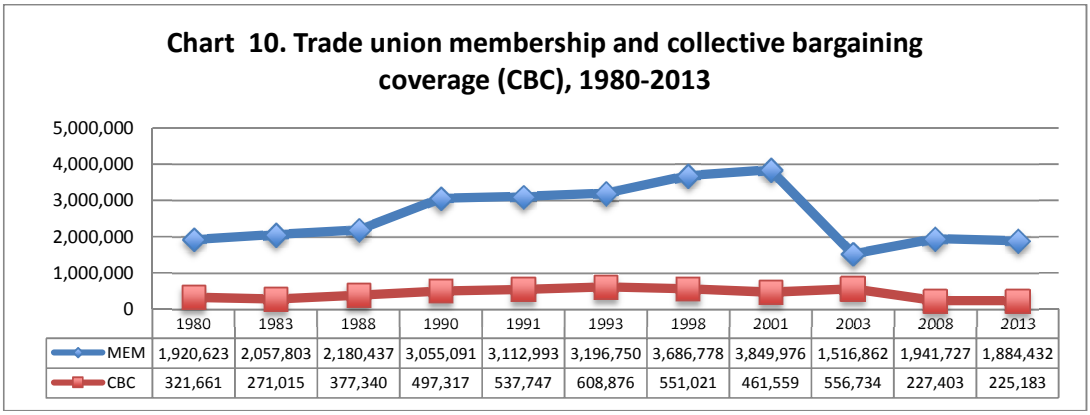
Chart 9. Employment levels and collective bargaining coverage (CBC), 1963-2013



	1963	1968	1973	1978	1983	1988	1993	1998	2003	2008	2013
EMP	10,040,000	11,476,000	13,450,000	15,768,000	18,898,000	21,205,000	24,382,000	26,631,000	30,635,000	34,089,000	38,118,000
CBC	152,864	97,760	153,465	286,873	271,015	377,340	608,876	551,021	556,734	227,403	225,183

Historical patterns also show that union membership does not necessarily translate to collective bargaining coverage (Chart 10). In 1980 when data from both union membership and collective bargaining coverage were first tracked, only 16 per cent of union members were covered by CBAs. In 2001 when union membership reached its peak level, only 14 per cent of union members were covered. In 2013, only 11.9 per cent of union members were covered.

[75]Figures under the narrow density rate is in relation to wage and salary workers as reflected in the 2014 Yearbook on Labor Statistics of BLES-PSA.



	1980	1983	1988	1990	1991	1993	1998	2001	2003	2008	2013
MEM	1,920,623	2,057,803	2,180,437	3,055,091	3,112,993	3,196,750	3,686,778	3,849,976	1,516,862	1,941,727	1,884,432
CBC	321,661	271,015	377,340	497,317	537,747	608,876	551,021	461,559	556,734	227,403	225,183

4.3 Why the model matters: Internal characteristics as obstacles

If trade union density and collective bargaining coverage rates are relatively indifferent to employment growth, what accounts for the declining rates in both? Especially given the labour market factors in which it operates, it would appear that the model is historically predisposed toward a low union density, low CBA coverage outcome. This predisposition has now become even more obvious as the model appears to have reached full maturation.

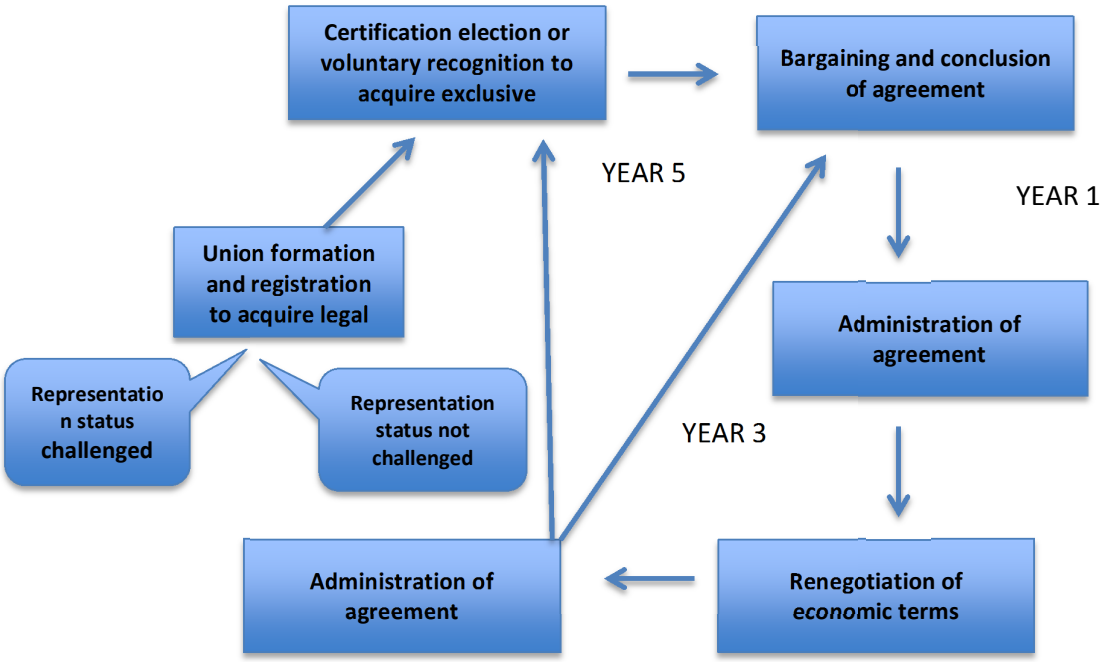
Figure 3 presents the enterprise-based trade union and collective bargaining structure as in a cycle, the entirety of which corresponds to the core elements of the model as already discussed. The essential stages are union formation and acquisition of legal personality, union recognition or acquisition of SEBA status, actual bargaining and conclusion of the agreement, and administration of the agreement. The duty to bargain collectively and to resolve disputes through the grievance mechanism, as well as the prohibition against unfair labour practices, run through the entire cycle. These stages have been part of the model since the IPA and the Labor Code of 1974. The only changes in the cycle are the terms of representation and CBA which are for five years, with CBA renegotiation on economic provisions allowed before the end of the third year.

The cycle has rarely run smoothly. Each core element is characterized by a heavy set of legal principles and technical rules which allow the pervasive presence or intervention of the State at every stage of the process. While these have the salutary objective of facilitating free and democratic choice and promoting organizational and bargaining rights, it is easy for a party to game the system because every issue arising from the application of each rule can be the subject of protracted litigation. Despite all policy pronouncements to the contrary, labour litigation in the Philippines is not a simple administrative process. It is a legalistic and multi-layered process where simple issues can be elevated up to the Supreme Court. Final resolution typically can take years, thereby preventing parties from ever reaching an actual bargaining situation.

Two cornerstones of the model – the concept of a bargaining unit and the principle of exclusive bargaining representation – are part of the first and second stages. These stages include the most critical points in the cycle - acquisition of legal personality and acquisition of SEBA status. Completion of these stages is a precondition for the union to demand collective bargaining with the employer as a matter of right, and correspondingly to make collective bargaining a duty and obligation for the employer. The most contentious issue in these stages is the determination of the appropriate bargaining unit, which is done not only once but thrice: during union formation prior to acquisition of legitimate status; during union recognition to determine the employees who will vote in the certification election; and during actual CBA negotiation when the parties negotiate on the scope of the bargaining unit.

Determining the appropriate bargaining unit involves classifying employees into managers, supervisors and rank and file. Supervisors and rank and file employees are eligible to separately form or join a union of their own class. But before each class can organize, they must also establish mutuality or community of interest. The determination is necessary, among others, to establish the basis for the 20 per cent minimum membership requirement that a union must show to support its application for independent registration, to determine the list of eligible voters in the certification election, and to determine the constituency of the bargaining unit.

Figure 3. The trade union and collective bargaining cycle



Out of this process may arise a host of legal issues the resolution of which will have to pass through several agencies, from the Med-Arbiter or Regional Director of DOLE as original administrative recourse, the BLR or the Office of the DOLE Secretary as appellate recourse, the Court of Appeals as the intermediate judicial recourse, and the Supreme Court as the ultimate judicial recourse. In many cases, parties with their arsenal of technical and legal arguments often exhaust their legal remedies all the way to the Supreme Court on simple issues such as whether the statements in the supporting documents submitted by the union really expressed the members' desire to join a union or whether the minutes was really an evidence that the union held an organizational meeting[76]; whether supporting documentary requirements that are not under oath is a ground to revoke a union's legitimate status and whether commingling of managers, supervisors and rank and file employees in one union is a ground to revoke a union's registration[77]; whether faculty and non-faculty employees should form one bargaining unit in an academic institution[78]; whether route salesmen are managers or supervisors eligible to join a union[79]; whether "capatazes" of a mining company in charge of implementing job orders by supervising and

[76] *Toyota Autoparts v. The Director of the Bureau of Labor Relations, G. R. No. 131047, March 2, 1999.*
[77] *Samahan ng Manggagawa sa Charter Chemical – Solidarity of Unions for Empowerment and Reforms (SMCC-SUPER) v. Charter Chemical Corporation, G. R. No. 169717, March 16, 2011.*
[78] *University of the Philippines v. Ferrer-Calleja, G.R. No. 96189 July 14, 1992.*
[79] *United Pepsi Cola Supervisors Union v. Laguesma and Pepsi-Cola Products, G. R. No. 122226, March 25, 1998.*

instructing miners, mackers and other rank-and-file workers under them, assessing and evaluating their performance, making regular reports and recommendations on new systems and procedure of work, as well as guidelines for the discipline of employees are supervisory or managerial employees[80]; whether checkers and "confidential and executive secretaries" who are obviously performing routine and clerical tasks should be considered confidential employees and thereby ineligible to form or join a union[81], among others. Each of these issues took several years to resolve, in the meantime suspending the cycle and stranding the union in the organizing or recognition stages. In one case involving a company raising and selling poultry (Box 1), it took seven years from the filing of the petition for certification election before an election was allowed to be conducted, only because of issues raised on the eligibility of some supervisors and on whether or not the plants of the same company in three different locations should constitute one bargaining unit.

Box 1. A game of chicken - The first half
(San Miguel Supervisors and Exempt Employees Union v. Laguesma, G.R. No. 110399, August 15, 1997)

*In **October 1990**, the San Miguel Corporation Supervisors and Exempt Employees Union filed with the Med-Arbiter of the DOLE a petition for certification election for the right to be recognized as the sole and exclusive bargaining agent of supervisors and exempt employees in the SMC Magnolia Poultry Products Plants of Cabuyao, San Fernando and Otis. In December 1990, the Med-Arbiter granted the petition and ordered a certification election among the supervisors and exempt employees of the SMC Magnolia Poultry Products Plants of Cabuyao, San Fernando and Otis as one bargaining unit.*

The Company appealed the Med-Arbiter's order to the Office of the Secretary of Labor (DOLE), on the ground that the Med-Arbiter erred in grouping together all three separate plants into one bargaining unit, and in including supervisory levels 3 and above whose positions are confidential in nature.

*In **August 1991**, DOLE, thru Undersecretary Laguesma, modified the Med-Arbiter's order and instead directed the conduct of separate certification elections among the supervisors ranked as supervisory levels 1 to 4 (S1 to S4) and the exempt employees in each of the three plants at Cabuyao, San Fernando and Otis.*

*In **March 1993**, upon a motion for reconsideration of the Company, DOLE, citing current jurisprudence, modified its decision excluding S3 and S4 Supervisors and exempt employees from participating in the certification election because they are confidential employees. Citing jurisprudence, DOLE ruled that that confidential employees, like managerial employees, are not allowed to form, join or assist a labour union for purposes of collective bargaining.*

Consequently, the Union elevated the case to the Supreme Court, on two issues: (a) whether Supervisory employees 3 and 4 and the exempt employees of the company are considered confidential employees, hence ineligible from joining a union; and (b) whether the employees of the three plants constitute an appropriate single bargaining unit.

*In **August 1997**, the Supreme Court issued a decision re-instating the Med-Arbiter's 1990 order. It ruled that for confidential employees to be ineligible, they must: (a) assist or act in a confidential capacity; and (b) to persons who formulate, determine, and effectuate management policies in the field of labour relations. The two criteria are cumulative, and both must be met if an employee is to be considered a confidential employee — that is, the confidential relationship must exist between the employee and his supervisor, and the supervisor must handle the prescribed responsibilities relating to labour relations. Based on their job descriptions and functions, the S3 and S4 Supervisors and the exempt employees of the Company are not considered confidential employees for purposes of exercising their right to self-organization.*

Further, the Company's three plants should be considered as one bargaining unit because it constitutes a grouping of employees with substantial community or mutuality of interest in wages, hours, working conditions and

[80] *Lepanto Consolidated Mining Company v. The Lepanto Capataz Union, G. R. No. 157086, February 18, 2013.*
[81] *Tunay na Pagkakaisa ng Manggagawa sa Asia Brewery v. Asia Brewery, G. R. No. 162025, August 3, 2010.*

other subjects of collective bargaining. Although the employees belong to three different plants, they perform work of the same nature, receive the same wages and compensation, and most importantly, share a common stake in concerted activities.

A certification election is supposed to be a proceeding of a fact-finding and non-adversarial nature. But experience shows that the proceeding can be a graveyard for unions. The law provides that any party to a certification election may appeal the order or results of the (certification) election as determined by the Med-Arbiter on the ground that the rules and regulations or parts thereof established by the Secretary of Labor and Employment for the conduct of the election have been violated. Such appeal shall be decided within fifteen calendar days[82]. This seemingly innocuous provision gives rise to two cycles of administrative appeals and judicial review arising from a single case. Under this provision, an order of the Med-Arbiter granting or denying the petition for certification election can be appealed to the DOLE Secretary, and the resolution of the Secretary may be elevated for judicial review to the Supreme Court, as what happened in the case in Box 1. Once the Supreme Court orders the actual conduct of the election and the results are certified by the Med-Arbiter, these results can again be subject of an appeal to the DOLE Secretary, whose action may also be subject of judicial review. That is why the case presented in Box 1 gave rise to another case (Box 2), in which the Supreme Court was called upon to rule on such minutiae as whether or not an employee assigned to breed chicks and grow chickens should belong to the same bargaining unit as an employee who dressed chickens. Together, these two cases involving the same union took a total of twenty-one years from 1990 to 2011 to resolve. In its resolution on the second case, the Supreme Court wrote "finis to the issues raised so as to forestall future suits of similar nature." Ironically, what the union got was a paper victory. The long process in its effort to acquire and be conferred collective bargaining rights had long wrote finis to the union. Based on BLR records, it ceased submitting its annual reporting requirements in 1999.

Box 2. A game of chicken – The second half
(San Miguel Foods, Inc. v. San Miguel Corporation Supervisors and Exempt Union, G.R. No. 146206, August 1, 2011)

The Supreme Court's decision in ***San Miguel Supervisors and Exempt Employees Union v. Laguesma, G. R. No. 110399, August 15, 1997*** *was remanded to DOLE for implementation.*

In ***September 1998****, upon order of the Med-Arbiter, a certification election was conducted. The Company, however, challenged the eligibility of 76 voters who participated in the election, contending that some employees do not belong to the bargaining unit which the Union sought to represent because they were: (1) confidential employees; (2) employees assigned to the live chicken operations, which are not covered by the bargaining unit; (3) employees whose job grade is level 4, but are performing managerial work and scheduled to be promoted; (4) employees who belong to the Barrio Ugong plant; (5) non-SMFI employees; and (6) employees who are members of other unions.*

In ***April 1999****, after having ruled that the 76 challenged voters were eligible to vote and ordering their votes to be counted, the Med-Arbiter certified the Union as the exclusive bargaining agent of the supervisors and exempt employees of the Company's plants in Cabuyao, San Fernando and Otis. The Company appealed the Med-Arbiter's order to the DOLE Secretary.*

In ***July 1999****, DOLE affirmed the order with the modification that four employees be excluded from the bargaining unit. DOLE opined that the four should be excluded because they were either members of a separate bargaining unit or are employees of another employer. The Company appealed the DOLE's resolution to the Court of Appeals.*

In ***April 2000****, the Court of Appeals affirmed with modification DOLE's resolution, stating that those holding the positions of Human Resource Assistant and Personnel Assistant should also be excluded from the bargaining unit. In* ***November 2000****, the Court of Appeals denied the Company's motion for reconsideration.*

[82]Labor Code, Art. 259.

Thereafter, the Company questioned the Court of Appeals' resolution with the Supreme Court. Among others, it argued that the Court of Appeals deviated from and expanded the scope of the bargaining unit already decided in the earlier Supreme Court ruling in ***G.R. No. 110399****, and likewise deviated from jurisprudence when it ruled that a payroll master was not a confidential employee.*

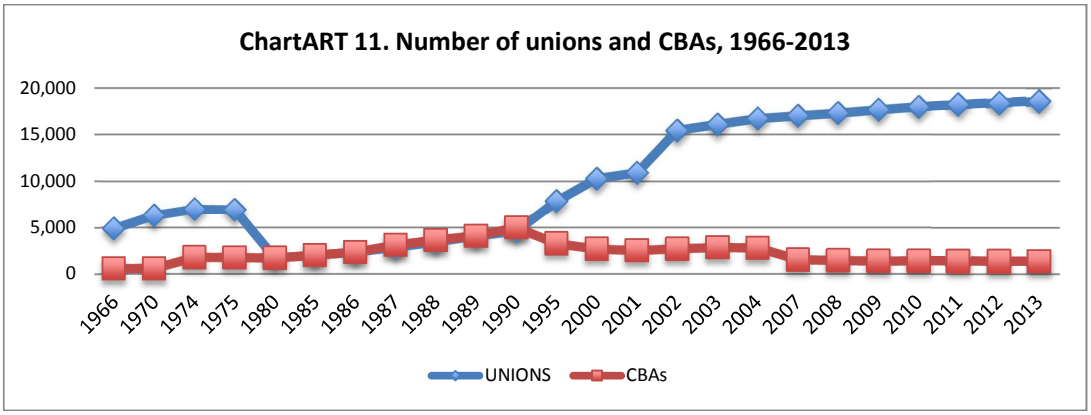
The Company contended that the Supreme Court's ruling in ***G.R. No. 110399*** *already identified the specific employees who can participate in the certification election, i.e., the supervisors (levels 1 to 4) and exempt employees of San Miguel Poultry Products Plants in Cabuyao, San Fernando, and Otis. Thus, the Court of Appeals erred in expanding the scope of the bargaining unit so as to include employees who do not belong to or who are not based in its Cabuyao or San Fernando plants. The Company also argued that the employees of the Cabuyao, San Fernando and Otis plants of its predecessor, San Miguel Corporation, as stated in* ***G.R. No. 110399****, were engaged in "dressed" chicken processing, i.e., handling and packaging of chicken meat, while the new bargaining unit, as subsequently defined by the Court of Appeals, included employees engaged in "live" chicken operations, i.e., those who breed chicks and grow chickens. The Company also raised the same issues that it earlier raised with the Med-Arbiter.*

In ***August 2011****, the Supreme Court denied the Company's petition and ruled that proceedings for certification election are quasi-judicial in nature and, therefore, decisions rendered in such proceedings can attain finality. Applying the doctrine of res judicata, the issue pertaining to the coverage of the employees who would constitute the bargaining unit is now a foregone conclusion.*

The Supreme Court also ruled that a certification election is the sole concern of the workers; hence, an employer lacks the personality to dispute the same. An employer has no standing to question the process of certification election since this is the sole concern of the workers. Law and policy demand that employers take a strict, hands-off stance in certification elections. The bargaining representative of employees should be chosen free from any extraneous influence of management. A labour bargaining representative, to be effective, must owe its loyalty to the employees alone and to no other. With the foregoing disquisition, the Court writes finis to the issues raised so as to forestall future suits of similar nature.

4.4 Model changes and historical trends: A convergent view

Part I tracked the changes within the model over time, identifying key periods of transition. Chart 11 shows how the number of unions and CBAs increased or decreased at these key periods.



The data suggest that changes within the model interacting with political and economic transitions do nudge unionization and CBA patterns, confirming the importance of the model as the driver of policy performance. These patterns yield the following observations:

1. The number of unions generally exceeds the number of CBAs. The gap between these two indicators is traditionally wide, underscoring the difficulties in moving from the union formation stage to the bargaining stage. Exceptionally, there was an abrupt fall in the number of unions in 1975 because of three changes within the model introduced through the 1974 Labor Code: the introduction of a minimum membership requirement before a union can apply for registration; the State-mandated one-union, one-industry restructuring of the union movement; and the introduction of strict requirements for a strike and lockout. With respect to restructuring, this made it possible for one federation with affiliates organized along industry lines to represent different bargaining units with separate CBAs. This also explains why around 1980, there were more CBAs than unions. The effects of restructuring on union organizing patterns lingered until the 1989 amendments of Book V of the Labor Code.

2. From 1966 to 1974, under the regime of the more liberal IPA, the union and CBA numbers were on an uptrend. With the Labor Code of 1974 implemented under a martial law regime, the number of unions dropped and the increase in the number of CBAs was arrested. There would virtually be no increase in CBA coverage during the martial law years spanning over the next decade (Chart 9).

3. After 1972, the State embarked on an export-led industrialization policy and established export-processing zones as manufacturing enclaves. While theoretically, expansion of manufacturing would have opened up new organizing opportunities, this in fact did not happen. This can be attributed to the more difficult organizing environment under the martial law regime and the persistent claim that administrators in the export-processing zones imposed a union-free and strike-free policy that made union penetration difficult.

4. In 1981, martial law was officially lifted. There were no changes in the model but authoritarian control, including rules on freedom of assembly and strikes, started to loosen. The labour front became restive and assertive. In 1983, union and CBA numbers started inching up until the collapse of the authoritarian regime in 1986.

5. The model gained its most significant achievements between 1986 and 1990, a period which political and social scientists describe as the return of a "democratic space". Policy-wise, this space was filled by Executive Orders No. 111 and 126, by the 1987 Constitution, and by the amendments of Book V of the Labor Code in 1989. Executive Order No. 111 lifted the restrictions on union organizing and collective bargaining. The effect was a steady increase in unions and CBAs that extended until 1990. This period saw the fastest rate of increases in union membership levels and steady increases in collective bargaining coverage levels (Charts 10 and 9). An improvement in trade union density rate was also recorded (Chart 8).

6. The 1989 amendments consolidated the amendments under Executive Order No. 111. It also clarified the demarcations on the right to organize by declaring managerial employees as ineligible to form or join unions and recognizing the right of supervisors to form their own unions[83]. The consolidation contributed to the jump in the number of unions and the sustained uptrend in membership levels through the 1990s (Charts 7 and 10).

7. The 1989 amendments extended the term of representation status of a SEBA from three years to five years[84], a move partly intended to discourage union raiding. The longer term,

[83]Labor Code, Art. 245.

[84]Labor Code, Art. 253-A. *Terms of a collective bargaining agreement*. - Any Collective Bargaining Agreement that the parties may enter into shall, insofar as the representation aspect is concerned, be for a term of five (5) years. No petition questioning the majority status of the

combined with the earlier liberalization of requirements on union registration and filing of petitions for certification elections in unorganized establishments, may have encouraged unions to channel their efforts at organizing new unions, thus contributing to the sustained increase in the number of unions during this period.

8. On the other hand, the decrease in the number of CBAs after the 1989 amendments can be attributed to a confluence of changes in the model and external factors. Along with the extension of the term of representation, the amendments similarly extended the term of CBAs, and introduced a renegotiation clause before the third year of the CBA and an automatic retroactivity clause if the parties are able to conclude a new CBA within six months from the expiration of the previous one[85]. The intent was to encourage speedy conclusion of negotiations and to discourage unions from engaging in protracted negotiations. The data, however, suggest that the intention was not achieved. Quite the contrary, anecdotal evidence suggests that the automatic retroactivity clause may have created a perverse incentive for employers to delay the conclusion of an agreement until after the six-month automatic retroactivity period to minimize costs. If this is true, it then helps explain why the number of CBAs remained relatively flat through the 1990s before starting on a new downtrend in the succeeding decade.

9. Economic factors also played a major role in the decline in the number and coverage of CBAs starting from the mid-1990s. The economy experienced a recession resulting from the spike in world oil prices during and after the Gulf war in 1990. This resulted in double-digit inflation and unemployment rates early in the decade. With the Philippines entering the World Trade Organization-General Agreement on Tariffs and Trade (WTO-GATT) regime in 1995, economic policy was directed at structural adjustments, dismantling of protectionist barriers and adoption of measures to make the economy more open and competitive. Erstwhile protected or subsidized industries were subjected to the discipline of the market. Other industries, such as the garment and apparel sector, relocated to other countries with better infrastructure and lower labour costs. All these led to the closure of many companies, not a few of which had unions and CBAs with large membership bases[86].

10. Reforms in the labour dispute resolution (LDR) system, also introduced mostly through the 1989 amendments, increased the role of the State in industrial relations, possibly undermining the policy of promoting shared responsibility in the workplace. The amendments expanded the scope of jurisdiction of LDR mechanisms and added additional layers to the process. The overall impact was to clog the dockets and slow down case disposition, a problem which the 2013 amendments aimed to correct. With respect to acquisition of collective bargaining rights, the cases cited in Part III clearly demonstrate that

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incumbent bargaining agent shall be entertained and no certification election shall be conducted by the Department of Labor and Employment outside of the sixty-day period immediately before the date of expiry of such five-year term of the Collective Bargaining Agreement. All other provisions of the Collective Bargaining Agreement shall be renegotiated not later than three (3) years after its execution. Any agreement on such other provisions of the Collective Bargaining Agreement entered into within six (6) months from the date of expiry of the term of such other provisions as fixed in such Collective Bargaining Agreement, shall retroact to the day immediately following such date. If any such agreement is entered into beyond six months, the parties shall agree on the duration of retroactivity thereof. In case of a deadlock in the renegotiation of the Collective Bargaining Agreement, the parties may exercise their rights under this Code.

[85]Labor Code, ART. 253-A. *Terms of a collective bargaining agreement.* - Any Collective Bargaining Agreement that the parties may enter into shall, insofar as the representation aspect is concerned, be for a term of five (5) years. No petition questioning the majority status of the incumbent bargaining agent shall be entertained and no certification election shall be conducted by the Department of Labor and Employment outside of the sixty-day period immediately before the date of expiry of such five-year term of the Collective Bargaining Agreement. All other provisions of the Collective Bargaining Agreement shall be renegotiated not later than three (3) years after its execution. Any agreement on such other provisions of the Collective Bargaining Agreement entered into within six (6) months from the date of expiry of the term of such other provisions as fixed in such Collective Bargaining Agreement, shall retroact to the day immediately following such date. If any such agreement is entered into beyond six months, the parties shall agree on the duration of retroactivity thereof. In case of a deadlock in the renegotiation of the Collective Bargaining Agreement, the parties may exercise their rights under this Code.

[86]Bitonio Jr., *idem,* p. 17.

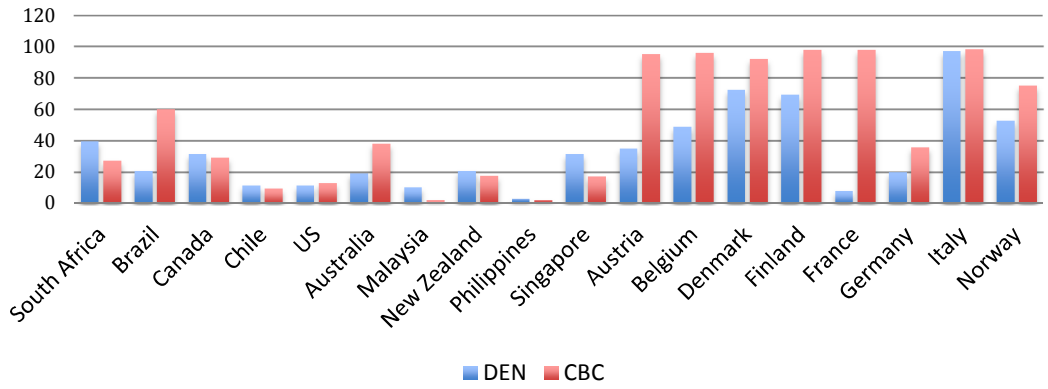
the process can work as a time-delay mechanism to frustrate the effective exercise of bargaining rights.

11. The amendments in 2007 were intended to strengthen the right to self-organization. But the data show that thereafter, unionization and collective bargaining levels have continued bottoming out. The amendments did not produce the desired impact because these simply incorporated existing rules and jurisprudence into the law. The removal of the minimum membership requirement for federations to create chapters was already in place in the 1997 implementing rules of the Labor Code[87]. On the other hand, the by-stander rule had been a long-standing jurisprudential policy and was also incorporated in the same implementing rules in 1997.

4.5 Experiences in other countries

In 2010, the ILO conducted an international statistical inquiry on trade union density and collective bargaining coverage rates in 2010. A number of countries with different industrial relations models, including the Philippines, were included in the inquiry. These countries may be grouped into four quadrants: High Trade Union Density (TUD)/High Collective Bargaining Coverage (CBC) rate; High TUD/Low CBC; Low TUD/Low CBC; and High TUD/Low CBC. Based on the ILO's statistical inquiry, Chart 12 is a random sampling of countries with High TUD/High CBC rate such as Italy, Denmark and Finland; Low TUD/High CBC rate such as France;[88] and Low TUD/Low CBC rate such as the Philippines and the United States[89]. No High TUD/Low CBC country is included in the sample. Notably, the Philippines had the lowest TUD (3.2 per cent) and CBC 2.2 per cent rates among all countries included in the survey.

CHART 12. Trade union density and CB coverage rates from various countries: International Statistical Inquiry, 2008-2009, ILO (2010)



The sample should invite policy makers and the social partners to ask what factors account for the differences in unionization and collective bargaining outcomes for different countries. Although more extensive quantitative and qualitative research is needed to validate these similarities, rough intuition suggests the following:

[87]DOLE Department Order No. 9, series of 1997.
[88]TUD and CBC rates for France are 8 per cent and 97.7 per cent, respectively.
[89]TUD and CBC rates for the US are 11.4 per cent and 12.9 per cent, respectively.

First, high TUD/high CBC countries have developed economies, large formal sector bases and strong peak or central organizations, have institutions and structures for coordinated and multi-level bargaining, are likely to have corporatist structures and democratic coalitions, have employment termination protection, and have *ergo omnes* provisions in their system that allow the coverage of collective agreements to extend to those who are not members of the bargaining unit or the union.

Second, low TUD/high CBC countries are similar in most respects to high TUD/high CBC countries. The differences may lie in: (a) the treatment of representational rights, i.e. the right to represent which is a union right, and the right to be represented which is a worker's right even if he or she is not a member of any union; and (b) the selection of the representative union through the competitive process of election.

And third, low TUD/low CBC countries are indifferent to the level of development or to the magnitude of the informal sector. What they have in common is the concept of exclusive bargaining representation, competitive process in selecting a bargaining representative through certification election or similar process, absence of well-coordinated industry or national bargaining structures, and absence of *ergo omnes* provisions. The Philippines shares a characteristic with high TUD/high CBC and low TUD/high CBC countries in that it has a security of tenure law[90] protecting workers against termination without just or authorized cause. Such protection, however, appears to have no positive impact on unionization and collective bargaining coverage, most probably due to the notoriously long delays in case disposition particularly in termination cases.

From these observations, poor policy outcomes of the Philippine model should not be surprising. The fact that these outcomes are similar to countries with models that have similar characteristics reinforce the argument that while economic or labour market factors cannot be disregarded, the operative characteristics within the model play a determinative role in constraining or facilitating the realization of intermediate and ultimate policy outcomes and impacts.

5. PART IV: CURRENT REFORM INITIATIVES

5.1 The official agenda

Initiatives to reform and strengthen the model have come in a continuing stream even right after the 1989 Labor Code amendments. The approach currently being taken by DOLE, the tripartite partners and Congress is to pursue reforms "piecemeal" rather than through a comprehensive and coherent package of amendments.

PLEP 2011-2016 is the latest policy document consolidating all proposed initiatives. It includes proposals such as strengthening conciliation, mediation and tripartism, some of which have been successfully enacted into law. Bills to provide for appeal on voluntary arbitration cases directly to the Supreme Court and to strengthen security of tenure are also being discussed in Congress. The idea of industry bargaining has recently been a point of discussion at the DOLE and the National Tripartite Industrial Peace Council (NTIPC). Taking off from these ongoing initiatives, the ILO and DOLE recently held a national tripartite workshop on strengthening collective bargaining with ground level stakeholders as participants.[91] The participants were

[90]Labor Code, Arts. 279-286.

[91]Tagaytay City, 28-29 January 2015. Participated in by DOLE (Regional Directors, Bureau of Labor Relations, National Conciliation and Mediation Board, and National Wage and Productivity Council) and representatives of the social partners from the national and regional tripartite industrial peace councils (TIPCs).

provided data and information on trends and developments in unionism and collective bargaining, a description of the elements and core characteristics of the model, and an analysis of policy performance. They were divided into four thematic groups organized along the four core elements of the model as discussed above[92]. For comparison, Table 2 is a matrix of the major proposals culled from ***PLEP 2011-2016*** and the national workshop.

Table 2. Matrix of reform proposals

Philippine labor and employment plan, 2011-2016	**Tripartite workshop to strengthen collective bargaining**
I. Recognition, promotion, protection and regulation of freedom of association and the right to organize	
• Amend Articles 234, 235, 236, 237 and 270 of the Labor Code toward strengthening workers right to self-organization toward synchronizing particular provisions of the Labor Code with ILO Convention No. 87: 1) Remove the 20 per cent minimum membership requirement for registration of independent unions. 2) Reduce minimum membership requirement for federations from ten to five duly recognized bargaining agent-local chapters. 3) Repeal the requirement that unions shall secure authorization from government prior to receiving foreign assistance. • Amend Article 243 toward strengthening the rights of non-regular workers in the informal economy to self-organization and collective negotiation and push for a magna carta for workers in the informal economy.	• On who may have the right to organize, the law should: 1) State that any group of workers, whether employed or not, can form trade unions. However, for purposes of collective bargaining, they must gain the support of the employees within the company that they wish to engage; and 2) Redefine rank-and-file employees to cover all workers regardless of the nature/status of their employment (regular, fixed-term, probationary, casual, seasonal, contractual), except the employees of a service provider. • On union registration, either retain the registration requirement as this is needed to confer legal personality on a union, or merely require a report to DOLE as a condition to acquiring legal personality. • Lower the minimum membership requirement for registration of independent unions from 20 per cent to 10 per cent of the members of the bargaining unit where the union seeks to operate. • Strengthen security of tenure. Strictly implement the Labor Code provision that regular employees should perform jobs necessary and desirable to the business of the employer. Clearly define "necessary and desirable" taking into consideration industry nuances.

[92]The thematic groupings were: (a) recognition, promotion, protection and regulation of freedom of association and the right to self-organization, including registration of unions;(b2) recognition, promotion, protection and regulation of collective bargaining rights, including determination of bargaining units and representation; (c) structure, process, scope and content of collective bargaining; and (d) dispute settlement. See Summary of Workshop Outputs, ANNEXES 1, 2, 3 and 4.

II. Recognition, promotion, protection and regulation of collective bargaining rights	
• No specific proposal under ***PLEP 2011-2016***.	• On union recognition: 1) Limit the modes of recognition in unorganized establishments to voluntary recognition or consent election and remove certification election. 2) Remove motions for reconsideration on certification and run-off elections. 3) Strict implementation of bystander rule for employers during certification elections. 4) In cases where a voluntarily recognized union is questioned by a legitimate union in the same bargaining unit and there is fraud or connivance in securing voluntary recognition, registration of the erring union should be cancelled. 5) Voluntary recognition procedures should be followed and observed. • On industry bargaining, sole and exclusive bargaining agents within the industry will come together and bargain collectively with the group of employers within the same industry. • On scope of the bargaining representation: 1) Unions – if principal/employer is unionized, employees of its service providers should be included; 2) Employers – employees of service providers should form their own union.
III. Structure, process, scope and content of collective bargaining	
• No specific proposal on collective bargaining under ***PLEP 2011-2016***, except means to promote tripartism: 1) Mandate creation of TIPC counterparts at the regional and local levels and the establishment of ITCs for purposes of promoting industrial peace and developing voluntary codes of good practices, with a view to benchmarking compliance with labour laws and regulations on an industry-wide basis (This has been passed into law through Republic Act No. 103095 [2013]). 2) Provide for a regular GAA funding of the NTIPC and its counterparts at the regional and local levels as well as for industry tripartite councils toward ensuring capacity-building, information-sharing, monitoring and evaluation, and the linkage of these bodies into a cohesive consultative and advisory structure.	• Scope of a CBA: extend CBA benefits negotiated by bargaining agent to all workers within the establishment, regardless of their classification. • Duration: shorten from five to three years. • Content: include provisions on: 1) Mandatory trust fund as safety net for workers in case termination due to authorized causes; 2) Productivity incentive schemes with clear and pre-determined criteria as second tier in the CBA while traditional negotiation remains as first tier; and 3) Hiring and ratio of regular and contractual employees. • Structure of CB: 1) Develop and practice three levels of bargaining, i.e., enterprise, industry-level, and national bargaining involving coalition of unions and employers. Industry tripartite

	councils and voluntary code of good practices may be used as entry points for second and third levels; and 2) Develop multi-employer bargaining to cover an employer and its contractors and subcontractors.
IV. Labour dispute resolution and settlement	
• Amend Articles 213 to 233 of the Labor Code to reform the NLRC. • Amend compulsory arbitration powers of the DOLE Secretary and NLRC under Articles 263, 264 and 272 of the Labor Code and limit its exercise to essential services. • Amend Article 228 of the Labor Code institutionalizing the 30-day mandatory conciliation period of all labour and employment disputes (This has been passed into law through Republic Act No. 103096 [2013]). • NOTE: Pending bills seeking to provide for direct appeal on NLRC and voluntary arbitration decisions to the Supreme Court also fall under this group.	• On conciliation-mediation, the Single-Entry Approach (SENA) is perceived as an additional layer in, instead of shortening, the decision making process. Labour dispute resolution agencies should not duplicate the conciliation-mediation process. • On voluntary arbitration, standardize voluntary arbitrator's fees or set fees the fees based on the arbitrator's skills and experience. • On compulsory arbitration, review and define jurisdiction of cases based on nature of case. Simple issues should be final and executory at a lower level and should no longer be subject of an appeal to the Supreme Court.

5.2 Current proposals: Expedient but not transformational

The changes in the model over time were made within the overall framework of labour protection and social justice, using the same policy design institutionalized through the Labor Code of 1974, and in many ways appearing to have gone full circle to the older design under the IPA. In this respect, the strength of the model lies in the continuing affirmation of the traditional values and mechanisms rooted in industrialism and accumulated past experiences. But the changes did not modernize and make the model adapt to a more globalized, liberalized, technology-driven and market-oriented economic system that has restructured employment arrangements and has weakened the organizing assumptions, principles and structures of industrialism. Further, the changes did not make the model more inclusive of workers under non-standard or non-regular circumstances such as those in micro and small enterprises and in the informal sector.

The proposals under Table 2 reflect how the tripartite partners diagnose and intend to address the problems in the model. Progress has been made in the ***PLEP 2011-2016*** proposals as some of these have been adopted through legislation or are now covered by existing rules or programs. It is important for the tripartite partners to build momentum on this progress. This said, it is noted that the proposals pertain only to the first and fourth core elements of the model (freedom of association and labour dispute resolution) but not to the second and third core elements (bargaining representation, structure and scope of collective bargaining). Also, the proposals are procedural in nature, neither creating new and substantive rights nor impacting on the problematic characteristics of the model. On the other hand, the national tripartite workshop outputs focused on operational details and how these might be resolved to avoid confusion in policy implementation. No proposals were advanced in terms of addressing the problematic substantive characteristics within the model.

In both the PLEP 2011-2016 and the national tripartite workshop outputs, issues and responses appear shaped to fit within the current model rather than to address substantive constraints and look for out-of-the model solutions. This is probably an offshoot of social partners' familiarity with the model, their deep engagement in its operational details, the mindset of using a piecemeal approach at reforms, and the possibility that their perspectives and socialization processes are too alike in spite of their different interests. In all, the proposals – including those that have been enacted to legislation - tend to preserve and solidify the characteristics of the existing model, not to transform it.

5.3 The case for a new model: Strategic talking points

A broad, coordinated, coherent and more purposeful transformational strategy is required to effectively strengthen freedom of association and collective bargaining. The tripartite partners should aim to build upon the core elements of the model. It is likewise extremely important to reset the role of government in the model, in particular transitioning from a State-centric and highly regulative to a more facilitative and promotional role as to give the social partners greater autonomy in regulating their relations. Equally important is to aim at eliminating the model's constraining characteristics, installing new moving parts, and pushing the frontier of organizing and collective bargaining possibilities outward.

Below is a non-exhaustive list of recommended talking points and issues that can expand the field of debate and help generate strategic options and choices.

5.3.1 Recognition, promotion, protection and regulation of freedom of association and the right to organize

The current model contains prior legal restraints on the right of a worker to form, join or assist in the formation of unions. Unnecessary restraints should be removed.

1. For workers covered by an employment relationship, the issue is how to put into full effect the principle that all employees, without distinction whatsoever, shall have the right to form, assist or join a union of their choice on the first day of their employment. This issue subsumes:

    - Simplification of the rules on who are eligible to form or join unions. There is a need to revisit the classifications of employment and category or status of employees in relation to their eligibility or ineligibility to exercise their right to organize. Too many classifications or categories of employment lead to fragmentation of bargaining units. This weakens the efficiency and effectiveness of collective bargaining.

    - Whether or not certain employees, on the theory of conflict of interest, should be declared ineligible by law to exercise the right to organize. For example, employees "acting in the interest of the employer" (i. e., managers and confidential employees); and employees who are nominal owners of an enterprise (such as in cooperatives and other arrangements).

    - Whether or not exclusion of employees from being represented should be determined by law or by government action (i.e., inclusion-exclusion proceeding), or only through negotiation.

- Simplification of the definition and determination of an appropriate bargaining unit, at what point the determination should be made, and the role of the State in making this determination.

- Whether or not union members who subsequently lose their employment status should continue to have the right to be represented by a union.

2. A major issue is how to put into full effect the principle that the right to organize shall not be subject to "prior authorization." This issue subsumes:

    - Whether or not State action or approval is a condition precedent to the acquisition of legal personality.

    - Whether or not a specific minimum membership requirement should be imposed by law as condition precedent to acquisition of legal personality.

    - Whether the voluntary act of worker to be represented and the corresponding assumption of duty by the union to represent, not minimum membership pre-determined by statute or prior State action, should be sufficient to establish legal personality.

    - How to encourage the organization of workers and employers above the enterprise, and correspondingly how to operationalize the duty and obligation once workers and various employers have formed a multi-employer, industry or other similar grouping for purposes of collective bargaining.

3. To further strengthen the protection on the right to organize, the issue is whether or not existing procedures, remedies and sanctions are sufficiently dissuasive, efficient and effective in deterring acts of unfair labour practice and other forms of discrimination, coercion and interference. This issue includes:

    - Effectiveness of protection at the union organizing stage, particularly when the union has yet to acquire legal status.

    - Effectiveness of protection in deterring unscrupulous practices of organizers and employers.

    - Effectiveness of protection accorded by the criminalization of unfair labour practices.

    - Effectiveness of protection in the requirement that there must first be an administrative finding of unfair labour practice before criminal prosecution may be pursued.

4. With respect to expanding the organizing universe, the issue is how to extend the right to organize and bargain to those in precarious employment and those outside an employment relationship, whether temporarily out of work or in the informal sector. This issue subsumes:

    - De-linking employment status from right of membership.
    - Union's duty of fair representation.
    - The purposes and objectives of organizations whose members are not within an employment relationship.

5.3.2 Recognition, promotion, protection and regulation of collective bargaining rights

The main constraint to collective bargaining is the highly technical, legalistic and litigious process of determining the appropriate bargaining unit and choosing an exclusive bargaining representative. The major issues are listed below.

1. How to strengthen the voluntary and consensual nature of bargaining between workers and employers through representatives of their choice. This issue subsumes:

    - Whether or not the will of the employees, not their employment classifications, categories or status as determined by law or applied in inclusion-exclusion proceedings, should determine the appropriate constituency of a bargaining unit.

    - Whether or not the choice of bargaining representative should continue to be premised on the concept of exclusive bargaining representation which is determined through the competitive process of certification election, or whether the law should recognize the bargaining status of composite negotiating panels made of up two or more unions who have agreed to coalesce and represent their members for purposes of collective bargaining.

    - Whether determination of constituency and scope of the bargaining unit should be treated as a pre-judicial issue that must be resolved before any bargaining can take place, or an item for negotiation outside of the State's labour dispute resolution mechanism.

    - Whether or not a union should be given a right to represent workers if it does not have a majority support of the employees in the bargaining unit or employer unit.

2. How to simplify the process of selecting a bargaining representative. This issue subsumes:

    - In the event choice is made through a certification election or similar means, conversion of a certification election into an administrative fact-finding process where the only objective is to validate the workers' voluntary agreement to be represented by a union. No appeals should be provided, or at least multiple appeals should be eliminated.

    - Other less cumbersome methods of expressing the desire to be represented may be allowed, and certification election may be resorted to only if such methods are absent.

    - For bargaining above the enterprise level, whether choice of representatives from workers' and employers' organizations should be done through a competitive electoral process following procedures applicable at the enterprise level, or customary practices in determining which are the most representative organizations would be sufficient.

5.2.3 Structure, process, scope and content of collective bargaining

The general strategic direction of reforms in strengthening the content, structure, process and scope of collective bargaining is to promote its voluntary and consensual nature, to ensure that the process is done periodically to allow the parties an opportunity to re-evaluate the terms of their relationship, and to extend the field of bargaining beyond the enterprise. The major issues are as follows:

1. Whether or not the term of a CBA prescribed by law at five years, subject to renegotiation before the end of the third year, should be maintained, or whether the law should provide a minimum or maximum term (for example between three to five years) and leave the parties the choice to determine the term of their contract and the time when they will review it, but not beyond the maximum term fixed by law.

2. How to lessen the adversarial characteristics of collective bargaining, particularly on the use of negotiation, instead of litigation, as the first option to resolve traditionally contentious issues like representation issues, determination of the scope and constituency of the bargaining unit, eligibility to join a bargaining unit, among others.

3. How to formulate an institutional mechanism for agreements outside the enterprise, including multi-employer, industry, national or area-wide bargaining. This issue subsumes:

    - Parties to bargaining.

    - Scope and nature of agreements, i. e., industry, area-wide, national agreements or such other arrangements.

    - Bargaining constituency and coverage of agreements. Applying the classifications of employment, grouping employees upon a narrow and segmented concept of common interest, and using highly technical inclusion-exclusion and election procedures that are used in enterprise level bargaining are impracticable for bargaining outside the enterprise.

    - Choice and manner of selection of representatives. Rights, duties and obligations of representatives and those who are represented.

    - Subject matter of agreements, including potential areas of complementation, supplementation or duplication with enterprise level bargaining.

    - Effect of agreements, i.e., whether these are binding, non-binding or framework agreements or guidelines.

    - Relationship or difference between legislation, executive orders, and regulations arrived at through tripartite bodies or social dialogue processes where the government is a party, on one hand, and agreements and industry practices arrived at or evolved by the social partners themselves, on the other.

    - Extension of agreements or some of its provisions to those not originally covered (*ergo omnes* provisions).

    - Enforcement and dispute settlement mechanism.

5.3.4 Labour dispute resolution (LDR) system

The main problems of the LDR system are the high volume of cases entering and clogging the dockets, legalistic procedures, the multi-layered structure where cases go through a series of interminable appeals, and "governance" problems. All this results in "justice delayed, justice denied" outcomes. Though volume is not really a problem in disputes related to the exercise of

union and collective bargaining rights, the outcomes are the same. Within the context of the need for reforms in the entire LDR system, the major issues in union- and collective bargaining-related disputes are:

1. How to optimize the positive effect of recent reforms, such as strengthening conciliation and mediation as the first approach in all labour disputes. This issue subsumes how to evolve an alternative dispute resolution (ADR) mechanism for labour not limited to voluntary arbitration.

2. Whether the system should be downsized and if so, how this should be done. This issue subsumes the multiple layers of dispute adjudication (usually four, i.e., for certification election, there are two administrative layers from the Med-Arbiter to the Office of the DOLE Secretary, and two judicial recourses, starting with the Court of Appeals and then the Supreme Court. For voluntary arbitration cases, there are five layers starting with the in-house grievance mechanism and thereafter conciliation and mediation. When conciliation fails, the case will be submitted to the Voluntary Arbitrator whose decision is appealable to the Court of Appeals and ultimately to the Supreme Court. This has been so since the Supreme Court ruled for the strict observance of the doctrine of hierarchy of courts for labour cases[93].

3. How to strengthen voluntary arbitration, which subsumes:

    - Whether all disputes arising from organized establishments should be placed under the jurisdiction of the Voluntary Arbitrator.

    - How the procedures for voluntary arbitration can be simplified so that it does not mimic the NLRC or the courts.

    - Whether or not the decisions of the Voluntary Arbitrator, being final and binding, should be immediately executory.

    - The need to continuously professionalize the ranks of Voluntary Arbitrators.

4. How to institute an expedited procedure and how to limit the right to appeal for certain cases, similar to the rules on small claims used in the regular courts[94]. This issue subsumes:

    - Whether or not there should be a statutory right to appeal over decisions of the Voluntary Arbitrator.

    - Whether or not there should be a statutory right to appeal on an order granting a petition for certification election or certifying its results considering that the election is supposed to be only a fact-finding process.

[93]*St. Martin Funeral Home v. NLRC, G. R. No. 130866, September 16, 1998.*
[94]See Rule of Procedure for Small Claims Court, as Amended (A. M. No. 09-6-8-SC).

6. PART V: TOWARD AN INTEGRATIVE STRATEGIC FRAMEWORK

6.1 Building on the present

A comprehensive and coherent package of reforms is needed to deliver desired policy outcomes. The social partners should agree on a strategic road map. A substantive, in-depth and forthright evaluation of the strengths and weaknesses of the model and identification of the areas in the legal infrastructure where key reforms are needed is indispensable. Building on the present, the reform agenda should affirm the commitment of workers and employers on collective bargaining as the primary driver in bringing about fair outcomes in labour and employment relationships. The field of collective bargaining should be enlarged and the obstacles blocking the entry of workers and employers into productive negotiations should be removed. In this regard, the social partners can draw from international experiences not only on Conventions Nos. 87 and 98, but also from other related ILO instruments such as Convention No. 154 (Collective Bargaining Convention, 1981), Recommendation Nos. 163 (Collective Bargaining Recommendation, 1981), and 91 (Collective Agreements Recommendation, 1951).

6.2 The strategic framework

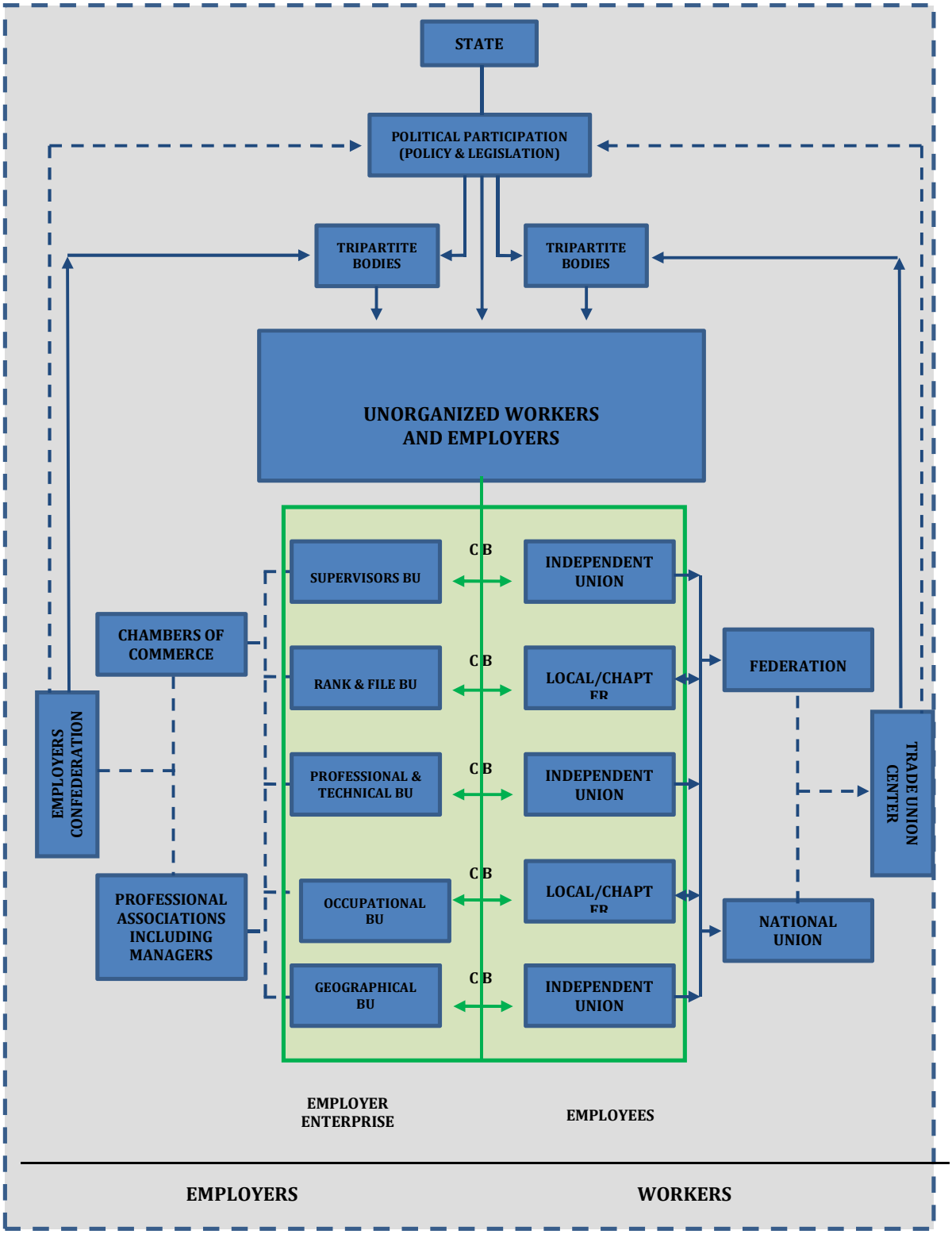
Figure 4 shows the field of bargaining (shaded light green) where the model applies, and the field where the model does not apply or is not seen to have much influence (shaded grey). The boxes are connected by either solid lines or broken lines. The solid lines indicate that there is an institutionalized or legislated basis for interaction between the connected boxes. The broken lines indicate that the interactions are either informal rather than institutionalized. Within the field are the unions and the possible combinations of bargaining units in an employer unit. Because of the decentralized bargaining structure, the enterprise is the only level where collective bargaining is institutionalized. Even then, entering this field is difficult because of the requirements which the model imposes. The result is a large grey field where interactions, processes and outcomes are almost entirely State-driven, either directly through legislation or indirectly through State-led tripartite mechanisms. Enterprise bargaining has no influence in this area. Quite the reverse, they have much interest in the outcomes of the interactions within this area and at the political level of decision- making, even if they do not directly participate or are represented, the results of interactions at these levels can benefit them directly in terms of legislated or mandated benefits, and indirectly to leverage their bargaining demands at the enterprise level.

On the other hand, enterprise unions and federations or national unions are connected to each other by solid lines as their relationships are part of the model. Federations are connected to trade union centers by broken lines. Trade union centers represent workers in statutory tripartite bodies by a solid line. On the side of employers, the interactions between individual employers with second layer employer organizations such as chambers of commerce are more traditional and customary than institutionalized. Peak organization of employers have no institutionalized interactions with second level employer organizations but like trade union centers, they have an institutionalized connection to tripartite bodies. Both trade union centers and top-level employer organizations do not have institutionalized access to political decision-making. Their influence is largely dependent on their lobbying strengths.

The institutionalized field of bargaining as shown above will continue to further constrict because, on one hand, the characteristics of the model impose very high entry costs before parties can enjoy the benefits of the process, and on the other hand, the number of workers in informal and non-regular employment who are excluded from the model continues to grow. The framework also implies that incentives and institutions of cooperation and coordination between and among

workers employed by different employers, as well as between and among different employers, are weak or inexistent. Under this situation, unionism and collective bargaining will not have any influence in attaining the social outcomes and impacts for which these were conceived.

Figure 4. Strategic framework: Fields and lines of bargaining



6.3 Concluding note: Drawing up a roadmap

What is to be done? The process of bringing the parties to the bargaining table should be made simpler and more efficient, e.g., the model should be freed from overly complex distinctions in defining bargaining units that lead to fragmentation of workers as well as from highly legalistic procedures of acquiring bargaining status. The field of bargaining should be expanded, both horizontally and vertically. In the framework, all the lines should be connected, if not institutionally then through practices evolved by the social partners. The test shall be how reform initiatives will redefine the roles of the State and the social partners, facilitate bargaining, and enable workers and employers to gain more responsible control of their relations and improve their situation through substantive and fair agreements, whether at the enterprise level or at other levels.

To ensure coherence, consistency and continuity in the advocacy for reforms, the tripartite partners may consider adopting a comprehensive, focused and long-term country programme that embodies the reform agenda of modernizing labour and employment relations, with strengthening freedom of association and collective bargaining as the integral component. The programme should be guided by a strategic roadmap prepared through broad-based and inclusive stakeholder participation, with existing tripartite and social dialogue mechanisms as the anchor but together with the traditionally under-represented sectors.

With continuing facilitation, technical support and assistance from the ILO, the road map should take into account the following:

1. Comprehensive evaluation of the current model, with possible inputs and views from independent experts and eminent industrial relations practitioners, as well as stakeholder participation to confirm and enhance the results of the evaluation.

2. High-level leadership, visioning and re-visioning exercise for the social partners with a view of adopting the road map and reform agenda.

3. Projects to optimize the effects of recent reforms in dispute resolution and settlement, including -

    - Capacity enhancement for the tripartite partners in the use of interest-based and evidence-based approaches in negotiation, conciliation and mediation, and voluntary arbitration.

    - Institutional enhancement in the use of ADR practices (i.e., widen the menu of available ADR approaches to include early neutral evaluation, good offices, etc.) and professionalization of ADR practitioners.

4. Capacity building for stakeholders in policy-making to improve quality of policy debates and outputs. This covers enhancing their knowledge, skills and competencies on the theory and practice of freedom of association and collective bargaining, especially in the following areas:

    - Learning and re-learning sessions on relevant ILO Conventions and national labour laws, including international comparison of experiences and practices.

    - High- and mid-level training on the policy process, especially statistical analysis, use of regulatory impact assessment tools, policy formulation and formulation of regulations.

5. Coordination among State and non-State actors toward a broad-based and more diversified sourcing of policy options and support or consensus for reforms, including:

    - Political coordination with Congress on matters requiring legislative action. For this purpose, an executive-legislative-stakeholder working group can be established as an intermediate clearing house for legislative amendments.

    - Policy discussions with the judiciary on the preconditions and scope of judicial review over administrative decisions involving freedom of association, certification election and collective bargaining.

    - Tapping of key local resources and setting up focused group discussion (FGD) forums made up of selected TIPC members, non-like minded, independent national experts, and decision-makers from other institutions in the executive branch whose functions impact on labour and employment relations.

6. A final project output in the form of a comprehensive reform agenda, with specific policy, legislative and other recommendations, supported by all stakeholders in a national tripartite conference. The legislative recommendations shall be a proposed new labour and employment relations law for submission to Congress.

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ANNEX A
Group 1 – Dispute management

Subject	Problem areas	Recommendations
1. <u>Self-organization</u> a. Registration	Whether or not there is still a need to register labour organization (chapter union, independent and workers' association) • Yes. Need to register to confer legitimacy/legal personality Problems: a. Non-disclosure of names of officers and members of local chapter b. Do away with double registration of local/chapter union How to determine validity of the charter certificate? What safeguards/safety nets are needed?	For the purpose of vesting legal personality, federation-issued charter certificate will suffice for local/ chapter union created. Remove authority of Regional Director to issue registration of local chapter. Federation shall furnish DOLE a copy of the charter certificate. Once created by federation, chartered locals should no longer be required to register in order to vest legal personality. However, it should be mandatory to report about its creation to the Regional Office and submit the requirements, certified by the Board Secretary and attested by the President. It should be attested by the Union President and certified by the Board Secretary.
b. Requirements for registration	Mandatory and non-mandatory registration requirements Independent registration: On 20 per cent requirement	Review the mandatory requirements from those that can be done away with: • Mandatory: Maintain existing regulations for 20 per cent requirement • Optional: Scaling of requirement based on the number of union members, e.g. if below 50 fees, do not require 20 per cent requirement.

c. Membership coverage	Collective bargaining unit: "inclusion-exclusion"	Rank-and-file should cover all workers regardless of the nature/status of their employment (regular, fixed-term, probationary, casual, seasonal, contractual, except the employees of the service provider): • Clarify classification of rank-and-file whether daily- or monthly-paid. • Strict compliance to closed shop provision. • Remove "no union" as an option during CE. • Subject VR to confirmation election to remove contract-bar rule. • Take into consideration the peculiarity of the industry since a blanket provision may not apply to all (e.g. sugar industry).
2. <u>Representation</u>	Determination of the SEBA Non-observance of bystander rule	• For unorganized establishments, limit to only to two stages (voluntary recognition and consent election and remove the certification election). Strict implementation of bystander rule for the employers
b. Voluntary recognition		
c. Election i. Consent election ii. Certification election iii. Run-off election		
3. <u>Collective bargaining agreement</u> a. Mode of bargaining i. Single enterprise bargaining ii. Multi-employer bargaining		

b. Items for bargaining i. Mandatory and non-mandatory provision ii. Economic and non-economic provision		Remove Family Planning Programme from the list of mandatory provisions if not in the law.
c. Duration of CBA		
4. <u>Dispute management</u> a. Grievance machinery		
b. Voluntary arbitration	VA fees	Set a ceiling for VA fee depending on the nature of the issue. Fix a minimum-maximum range in the CBA. Support the proposed VA Bill.
c. Conciliation mediation		
d. Compulsory arbitration		

ANNEX B
Group 2 – Dispute management

Subject	Problem areas/Recommendations
1. Self-organization a. Registration	**Problem:** *Exercise of freedom of association; without prior authorization* **Proposal:** • Instead of undergoing registration process, mere submission of report would suffice, as practiced by other countries.
b. Requirements for registration	**Proposal:** • For unorganized establishments, lower the membership requirement for independent unions from 20 per cent to 10 per cent.
c. Membership coverage	
2. Representation	**Problem:** *Pre-condition to strengthening the right to self-organize is the strengthening of the right to security of tenure* **Proposal:** • There should be strict implementation of the LC provision that necessary and desirable job should be performed by regular employees. • Clearly define "necessary and desirable" taking into consideration industry nuances
a. Voluntary recognition	**Problem:** *Generally, there is no problem with the VR procedures. The problem lies in the implementation.* **Proposal:** • VR process should be followed and observed. o A mere report of VR should be accepted by the DOLE. The same should not be subject to approval or denial. o Pre-condition to VR is the fact that the union seeking to be voluntarily recognized is the only existing organization in the establishment. **Problem:** *There are cases where a voluntarily recognized union is being questioned by a legitimate union.* **Proposal:** • Proposal: categorically state that should there be fraud or indications of connivance in the VR, the union's registration should be cancelled.
b. Election i. Consent election ii. Certification election iii. Run-off election	**Problem:** *Non-observance of by-stander rule* **Proposal:** • The by-stander rule should be strictly observed/ implemented. Employers should not intervene in union organizing and in the process of certification election. o The role of employers in the process of CE is just to provide the list of employees.

	o Intervention of employers sometimes result to violation of agreements made during pre-election conference. **Problem**: *Questions in inclusion/exclusion proceedings delays or affects the conduct of election.* **Proposal:** • Proposal to have a separate process to address questions/issues arising from inclusion/exclusion proceedings so as not to affect or delay the conduct of certification election. • Proposal to clarify the definition of rank-and-file employees. **General recommendation:** • There is a proposal for DOLE intervention to help foster harmonious relationship between labour and management during CE.
3. <u>Collective bargaining agreement</u> a. Mode of bargaining i. Single enterprise bargaining ii. Multi-employer bargaining	**Problem:** • Many workers are not covered by CBAs due to varied employment classifications. **Proposal**: • Proposal to observe fair representation. CBA benefits negotiated by the bargaining agent should be enjoyed by all workers within the establishment, regardless of their classification (i.e.: regular, contractual, seasonal, etc.). **General recommendation:** • There is a proposal to have an advisory that productivity-based scheme be included as second tier in CBA; traditional negotiation remains as first tier.
Others	**Proposal for Labor Code amendments:** • Clearly state that any group of workers, whether employed or not, can form trade unions. However, for purposes of collective bargaining, they must gain the support of the employees within the company that they wish to engage. • SEBAs within the industry will come together and bargain collectively with the group of employers within the same industry. • Practice three-tiered (multi-level) bargaining: (a) first tier – Company-level bargaining; (b) second tier – Industry-level bargaining; and (c) third tier – National coalition of unions talk with national coalition of employers to come up with collective agreements.

ANNEX C
Group 3 – Dispute management

Subject	Problem areas/Proposals
1. Self-organization a. Registration	
b. Requirements for registration	
c. Membership coverage	
2. Representation	• Labour: Once unionized, even employees of service providers should be covered. • Employer: Employees of service providers can just form their own union.
a. Voluntary recognition	
b. Election i. Consent election ii. Certification election iii. Run-off election	• There should be no more MRs for certification election and run-off election. • The "no union" option should be deleted in the ballots in certification election. However, employers want to retain the said option on the ground that "if workers have the right to organize, they also have the right not to organize".
3. Collective bargaining agreement a. Mode of bargaining i. Single enterprise bargaining ii. Multi-employer bargaining	• Multi-employer bargaining entails longer negotiations because the employers may not have a consensus on the negotiated provisions. • Multi-employer bargaining must be industry-based to eliminate discrepancies in economic benefits. Provided that, establishments should be properly categorized by size. Trade union structure should be considered since labour sector should be unified regardless of affiliation/membership, such that a group is allowed to negotiate on behalf of another. • There are some employers that are in favor of both options. • Look into the possibility of multi-employer bargaining with the same employer but covering said employer's contractors and subcontractors. **Recommendations**: • **Multi-employer bargaining** a. More education and dissemination on multi-employer bargaining. Benchmark and get the best practices of other countries that implement multi-employer bargaining. Then, pilot-test multi-employer bargaining in the country. b. Industry associations should also network or link with each other.

	c. Start with the ITCs with VCGPs created in the regions. This should be the entry point or forum in the development of multi-employer bargaining. d. Explore multi-employer bargaining involving establishments within eco-zones regardless of industry classification • **<u>Single enterprise/Industry bargaining</u>** Build on the best practices of single enterprise bargaining and use as example the automotive industry. **General recommendation**: Include the concepts and principles of unionism and collective bargaining in the curriculum of the tertiary level.
b. Items for bargaining i. Mandatory and non-mandatory provision ii. Economic and non-economic provisions	• Insert provisions on mandatory trust fund as a safety net for workers in case of company closure, retrenchment or redundancy. • Insert mandatory provisions on productivity incentive schemes. Its criteria should also be clear and pre-determined. **Recommendations**: • Conduct workshops and establish standards per industry using the ITCs and VCGPs as entry points. • Insert provisions governing the hiring of regular and contractual employees particularly on the ratio of regular to contractual.
c. Duration of CBA	• Employer: a. Duration of the CBA (five years) is okay provided that there can be renegotiation for economic benefits after three years. b. Shorten to three years to evaluate the company conditions, and to determine whether or not benefits need adjustments. This, however, may require legislation. • Labour: c. Shorten the duration of the CBA to three years (straight contract) to allow updating of economic benefits, evaluation of political conditions and flexibilities in negotiation. **Recommendation:** Shorten CBA period to three years through legislation amending the Labor Code or, if not immediately possible, issuance of a Department Order.
4. <u>Dispute management</u> a. Grievance machinery	
b. Voluntary arbitration	
c. Conciliation mediation	
d. Compulsory arbitration	

ANNEX D
Group 4 – Dispute management

Members:

1. Joffrey Suyao
2. Raymundo Agravante
3. Evita Mendoza
4. Rollen Rocha
5. Rio Dela Torre
6. Francis Valois
7. Samuel Cardenio
8. Bonifacio Tiongzon
9. Arnold Barillo
10. Norwena Acharon
11. Leo Rameses Amoyan
12. Hidelito Pascual
13. Warlito Tabanag

Problem areas:

Issuance	Problem areas	Policy	Others
Grievance machinery	There are feds which try to actively influence dispute management in the workplace even if they are not familiar with the grievance.		Need to build capacity of unions in Dispute Management/Grievance Handling/Shop Steward through NCMB and the feds.
Voluntary arbitration (VA)	VA fees are too high.	Standardization of fees for VAs/setting of range for VA fees based on skills and experience	
Conciliation and mediation	SENA perceived as an additional layer delaying decisions on labour cases. Quality of SENA processes, specifically at NLRC. Need for capacity building for Single Entry Desk Officers (SEADOs).	There should be timelines in the SENA. Review shortening of dispute resolution processes. Example: There should be no more SENA at the NLRC level. Take away appeals process at the Court of Appeal level, limit three re-setting of meetings at NCMB.	Continuous capacity building of SEADOs to ensure quality of settlements
Arbitration of cases	Need to speed up disposition of cases	Review and define jurisdiction of cases based on nature of case.	

		Determine who should handle what, and what level should decisions be executory. Simple issues should be final and executory at a lower level and must not reach the Supreme Court.	

Other areas:

Collective agreement

- NWPC to develop sector specific framework for developing productivity incentives. Example: quota/piece rate basis, services. NWPC and Bureau of Labor Relations (BLR) to work together in designing model CBAs.

- Intensifying labour education/trainings on CBA negotiation for workers and especially management.

- Integrate Freedom of Association-Collective Bargaining (FoA-CB) in high school and college courses, particularly in Business courses (as part of general education courses). Regional TIPCs to submit resolution to NTIPC so national offices of concerned agencies can start dialogue.

- Accreditation and certification of Human Resource (HR) managers which would include familiarity on HR and Labour Relations (LR), as part of promoting management awareness on FoA-CB and LR. The People Management Association of the Philippines (PMAP) and ECOP should take the lead role.

- Review of labour educational materials. Promote information, education and communication (IEC) materials on labour rights and standards and widely disseminate to local government units (LGUs) and Public Employment Service Office (PESO). Promote labour education for graduating students (LEGS).

- Promote mandatory/compulsory orientation on labour standards for businesses as part of LGU requirements. DOLE to have national agreement with LGUs.

- Capacitate PESOs on labour standard and LR.

Suggestions

- Include in the curriculum the concept and principles of trade unionism and collective bargaining. Requires coordination between DOLE and Commission on Higher Education (CHED). Focus should also be on the advantages of industrial peace. There should be a paradigm shift on trade unionism.
- Introduce IEC materials as early as primary level.

- Develop museums to promote labour education.
- Explore the idea of collective bargaining by the casual/contractual employees.
- Right to strike has to be strengthened to give more meaning to collective bargaining.
- There should be a specified term (minimum and maximum period) for negotiation.
- On dispute settlement, reform security of tenure provisions. Look into the amount and nature of the case. Specify issues that can no longer be elevated to a higher level. The enforcement and application of Special Operations Team is sluggish.
- National Electrification Administration (NEA) was given special power by RA 10531 – intervention in the conduct of collective bargaining in the form of a general assembly as a prerequisite to CB.

Mr Bonifacio Tiongson, RTIPC Labour Representative, Region VII

- Thanked DOLE and ILO for the success of the activity.
- Hoped to apply the learnings in the participant's respective companies/ establishments for a more effective CB in the future.
- Achieve the CBA in a more realistic manner to avoid recurring conflicts between labour and management,

Ms Rosemarie Manota, RTIPC Employer Representative, Region III

- Cited the preconceived notions attributed to unions and management, which should be rectified.
- Bible of the labour and management is the Labor Code, hence, there should be strict adherence to this.
- Purpose of the activity is to make CB effective to sustain welfare of workers.
- Develop policy reforms that are doable and balanced for both labour and management.
- Cited Labour Law Compliance System (LLCS) as an improvement in labour relations.
- Labour and management should be prepared when coming at the bargaining table.

Usecretary Chato, DOLE

- Cited the documented short-, medium- and long-term recommendations which will be tabled at the Tertiary Education Commission (TEC) and TIPC.
- Come up with concrete terms and conditions on engagement in the workplace.
- There should be another two more rounds following this seminar to allow development of more specific policy reforms and recommendations.
- There should be more discussions on the negotiated provisions in the CBA and their period of implementation.
- We need to work more to develop for a new frame for CB to strengthen trade unionism and sustainability of employers at the same time.
- Develop CB as a means to ensure parity between workers and employers.