The Philippines

Workers' Protection in a New Employment Relationship

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1 Introduction

1.1 Globalization and the Philippine Economic Development Strategy

"Globalization" has irrevocably altered the Philippine economic landscape.[1] Free trade the main instrument of globalization expedited the integration of Philippine economy with the world economy. Its application in the Philippines forced the shift in economic development strategy from "import substitution"[2] to one that is "export-led".[3]

Free trade has opened up the Philippine domestic market to foreign goods. It introduced more players in the domestic market. As a consequence, it heightened competition among industries for scarce demand in the domestic market.

Stiff competition has forced prices of goods in the domestic market to fall. At the initial implementation of free trade in the middle part of the decade 1980s, companies who were unable to cope with the heightened competition closed down. This resulted in a rapid increase in the number of unemployed workers in the country.

Those who stayed were forced to implement adjustment measures intended to make them more competitive. In the Philippines, this means a) utilization of more efficient technology and b) the use of flexible labor force. Both have profound negative consequences in the areas of employment and labor relations.

1.1.1 Employment Relations

The utilization of more efficient technology means that industries have to down size or right size their operations. This in turn entails dismissal of a substantial number of regular employees on grounds of redundancy.

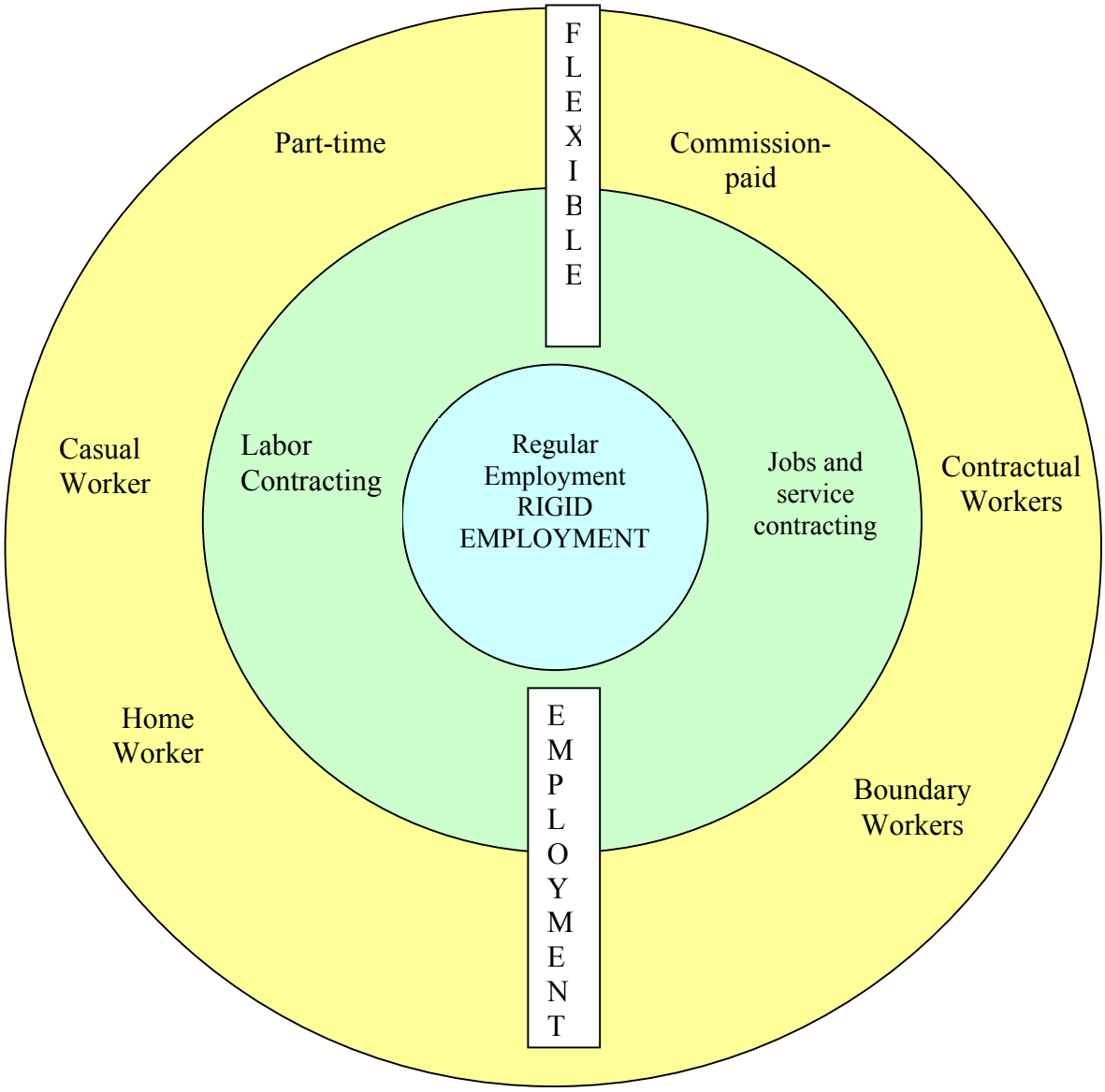
The use of a more flexible labor force has caused an alteration of employment relations in the Philippines. Figure 1 summarizes the New Employment Relations in the country after the economic reorganization.

[1] "Globalization" means the rapid integration of various national economy to the world economy. It is an economic regime characterized by free and open trade among nations. Through the eventual elimination of protective tariff, goods and services may freely move from nation to nation. On its impact on industrial relations please see Locke, R., T. Kochan and M. Piore (1997) **Employment Relations in a Changing World Economy,** The MIT Press, Massachusetts, U.S.A.

[2] "Import Substitution" is an economic development strategy that calls for the substitution of imported goods with locally produced goods.

[3] "Export-led" means the promotion of export for locally produced goods. The basic argument in favor of export-led industrialization strategy is that the domestic markets of developing countries are too small to support rapid industrialization.

Figure 1 New Employment Relations in the Philippines



At the center are the regular employees whose number is dwindling as a consequence of adjustment measures.[4] These are the legally adequately protected employees.

The second level consists of employees covered by triangular or trilateral arrangements. Compared to the regular employees, these types of workers generally do not enjoy security of tenure.

[4] See for example Dey, I. (1989) 'Flexible Parts' and 'Rigid Fulls': The Limited Revolution in Work-Time Patterns", **Work, Employment and Society**, vol. 3, pp.. 465-490; Standing, G. (1991) , **Structural Adjustment**, Geneva, ILO; Macaraya, B. and R. Ofreneo (1993), "Structural Adjustment and Industrial Relations: The Philippine Experience", **Philippine Labor Review**, vol. 16, no. 1, pp. 26-86.

And at the third or outer most levels are the other types of bilateral employment relations. These consist of home workers, workers in a boundary system, part-time workers, commissioned-paid workers, contractual workers, casual employees and other similar employee groups. Compared to the regular workforce and those in a triangular or trilateral arrangement, they are the most legally inadequately protected employees.

1.1.2 Labor Relations

The impact of globalization and free trade on labor relations in the Philippines is also profound. The labor relations system in the Philippines it will be noted is patterned after that of the United States of America which is anchored on freedom of association and collective bargaining.[5] Regular employees constitute the mass organization base of trade unions. With the dwindling number of regular employees, union enrollment is expected to decline.

1.2 Changes in the Philippine Labor Force Demography

The changes in Philippine labor force demography are summarized in Tables 1, 2 and 3.

The average active population increased by 1,193 from 45,770 in 1997 to 46,963 in 1998 (Table 1).[6] The labor force increased by 701 from an average of 30,354 in 1997 to 31,055 in 1998. Of this labor force, an average of 27,715 and 27,911 were employed in 1997 and 1998 respectively. In terms of percentage, the labor force participation rates are estimated at an average of 66.3 per cent and 66.1 per cent for 1997 and 1998 respectively. Employment rates are estimated at an average of 91.3 per cent and 91.6 per cent for 1997 and 1998 respectively.

The average underemployment decreased by 40 from 6,121 in 1997 to 6,061 in 1998. Unemployment however increased by 509 from 2,640 in 1997 to 3,149 in 1998. In terms of percentage, average underemployment rates are estimated 22.1 per cent and 21.6 per cent for the years 1997 and 1998 respectively while the average unemployment rates at 8.7 per cent and 10.1 per cent for 1997 and 1998 respectively.

The average number of wage and salary workers increased by 217 from 13,461 in 1997 to 13,678 in 1998 (Table 3). The average number of own-account workers increased by 115 from 10,352 to 10,467 while the average number of unpaid family workers declined by 136 from 3,902 to 10,357 from 1997 to 1998 respectively.

The above statistical data however do not accurately depict what is happening in the field of employment relations in the Philippines. The statistics could not capture the number of workers lacking adequate legal protection. This paper will attempt to shed light on the conditions of employment of such group of workers. Specifically, it will endeavor to analyze the increasing number of workers lacking adequate

[5] The Industrial Peace Act R.A. 875 which establish the industrial relations system and which is now copied in the Labor Code was derived from the U.S. Tyding-McDuffie Act.
[6] For statistical data based on gender please see table 3.

protection in the effort to identify or develop a framework that would facilitate the granting of adequate protection to these types of workers.

II The Labor Code of the Philippines and Employment Relationship.

2.1 Labor Code of the Philippines as an Instrument of Import Substitution Strategy.

The Labor Code is the main instrument that provides protective mantle to the workers in the Philippines. It was promulgated during an economic regime whose principal engine for growth was import substitution. Its basic assumption is that as economic development deepens most of the workers will eventually join the ranks of regular employees. Thus the provisions of the Labor Code are largely aimed at protecting those with regular employment.

The Labor Code as intimated is also an instrument to promote the success of import substitution. To ensure the growth of producers of substituting goods, import substitution strategy must strive to develop the domestic market through creation of demands. The Labor Code, through minimum wage fixing and collective bargaining plays a significant role in this regard. With occasional adjustment in the statutory wage and supplemental collective bargaining agreement benefits, a demand is created among the ranks of the workers.[7] Needless to say, strengthening of trade unionism is essential to insure the successful implementation of the collective bargaining system.

2.2 Concept of Employment Relations

The concept of employment relations under the Labor Code is based on control exercised by the employers over the employee and the work or service rendered by him. The basic assumption in law favors regular employment. The two broad types of employment relations are: (1) regular and (2) casual employment.

2.2.1 Regular Employment

The characteristic of regular employment is that the employer is directly responsible for (a) hiring and firing the worker, (b) providing work premises and work implements, (c) supervising and paying the wages of the workers, and (d) observing the legal requirements concerning employment, working conditions and labor relations. The employees on the other hand are expected to provide, under the authority and supervision of his employer, the labor inputs necessary for the smooth undertaking of the business of the latter.

[7] The Key strategies under import substitution are (a) protecting domestic market through protective tariff thereby making imported goods more expensive and thus less competitive and (b) development of domestic market through demand creation. Collective bargaining is one instrument that creates demand on the theory that since the workers are the largest social group in any country, by giving them more purchasing power, this will eventually result to more demands in the market. Thus under the Labor Code trade unionism must be strengthened and promoted to insure the creation of such demands.

There are generally three (3) kinds of regular employment recognized by the Labor Code. These are: (a) regular employment; (b) regular project employment; and (c) regular seasonal employment.

Regular employees

Regular employees are legally adequately protected employees. Such employees enjoy established labor standards such as those minimum wages, hours of work, rest days, overtime pay, etc. They also enjoy freedom of association and collective bargaining. In fact, this type of employees constitute the mass base of the Philippine trade union movement.

More importantly, this type of workers enjoys security of tenure guaranteed by the Philippine Constitution.[8] They cannot be removed from their employment except for just[9] or authorized[10] causes defined by the Labor Code. And through

[8] Article XIII, Social Justice and Human Rights, Section 3 of the Philippine Constitution, the most basic law of the land, provides:

"Sec. 3 – The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the right 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 the 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.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investment, and to expansion and growth."

[9] The just causes for dismissing an employee under the Labor Code of the Philippines are:

"Art. 282. *Termination by employer*. – An employer may terminate an employment for any of the following causes:

Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

Gross and habitual neglect by the employee of his duties;

Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representatives;

Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

Other causes analogous to the foregoing.

[10] The authorized causes are defined under Articles 283 and 284 of the Labor Code. These are:

"Art. 283. *Closure of establishment and reduction of personnel*. – The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving notice on the workers and the Ministry (now Department) of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to one (1) month pay or at least one half (1/2) month pay for every year of service, which ever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Art. 284. *Disease as ground for termination*. – An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation equivalent to at least one (1) month salary or to one-half (1/2) month salary

jurisprudence, employers are required to afford employees under this arrangement due process before they (employers) could legally dismiss them (employees) from employment.

Regular project employees

Project employees who are part of a work pool[11] are regular employees. They enjoy the various labor standards prescribed by law for regular employees.[12] They have the right to form association for the purpose not contrary to law. They also enjoy the right to collective bargaining. And they too enjoy security of tenure.

Employees however, who are not members of a work pool and are hired on a project to project basis are not considered as having regular employment. Thus said the Philippine Supreme Court, the highest court of the land, "contract workers are not considered regular employees, their services being needed only when there are projects to be undertaken.[13] They however enjoy a limited security of tenure. Thus the Supreme Court ruled that "a project employee hired for the purpose of a specific task also enjoys security of tenure; termination of his employment must be for a lawful cause and must be done in a manner which affords him the proper notice and hearing."[14]

Regular seasonal employees

The Supreme Court defined "seasonal employees" as "those called to work from time to time – the nature of their relationship with the employer is such that during off season they are temporarily laid off but during summer season they are re-employed, or when their services may be needed."[15] They are not separated from the service but merely considered as on leave of absence without pay until they are re-employed.[16] Their employment relations is never terminated but only suspended.[17]

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for every year of service whichever is greater, a fraction of at least six (6) months being considered as one whole year.

[11] Under Policy Instructions No. 20 issued by the Department of Labor and Employment, members of a work pool from which a construction company draws its project employees, if considered employee of the construction company while in the work pool, are non-project employees or employees for an indefinite period. If they are employed in a particular project, the completion of the project or any phase thereof will not mean severance of employer-employee relationship. This was also the decision of the Supreme Court in the case of Philippine National Construction Corporation v. National Labor Relations Commission, G.R. No. 85323, June 20, 1989.

[12] In the case of Uy v. National Labor Relations Commission, 261 SCRA 505, the Supreme Court ruled that:

"Project employees are those hired (1) for a specific project or undertaking; (2) the completion or termination of which project or undertaking has been determined at the time of engagement of the employee.

Members of a work pool from which a construction company draws its project employees are non-project employees if considered employees of the construction company while in the work pool."

[13] Cartagenas v. Romago Electric Co., G.R. No. 82973, Sept. 15, 1989; Luis de Ocampo, et al., v. NLRC, G.R. No. 81077, June 6, 1990.

[14] See Tomas Lao Construction v. National Labor Relations Commission, 278 SCRA 716. Under Philippine legal system, the decision of the Supreme Court forms part of the law of the land.

[15] Manila Hotel Co. v. CIR, et al. G.R. No. L-18875, September 30, 1963.

[16] Industrial Commercial Agricultural Workers Organizations v. CIR, et al., G.R. No. L-21465, March 31, 1966.

2.2.2 Casual Employment

All other types of employment relations not defined as regular employment are classified as casual employment. As the term suggests, casual employees do not enjoy security of tenure and therefore they may be dismissed at any time. We will discuss more of these types of employment relations at the latter part of this paper.

2.3 Legal Assumptions on Employment Relations.

As earlier stated, the legal assumption under the Labor Code on employment relations favors regular employment. The Labor Code provides that, "regardless of any written or oral agreement to the contrary, an employment is deemed regular where the employee is engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer."[18] Employees that have rendered at least one (1) year of service, whether broken or continuous, with respect to the activity in which they are employed are presumed regular.[19] The Supreme Court also ruled that "to be exempted from the presumption of regularity of employment, the agreement between a project employee and his employer must strictly conform with the requirements and conditions provided in Article 280 of the Labor Code."[20]

The Supreme Court, had occasion to interpret the meaning of regular employment. The Court ruled that "what determines regularity or casualness is not the employment contract, written or otherwise, but the nature of job – if the job is usually necessary or desirable to the main business of the employer, then employment is regular."[21]

The Supreme Court also ruled that "if an employee has been performing a job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of the activity to the business."[22] Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists.[23]

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[17] Tacloban Sagkahan Rice, et al., v. National Labor Relations Commission, G.R. No. 73806, March 21, 1990.

[18] The pertinent provision of the Labor Code on assumption in favor of regular employment.

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

An employment shall be deemed casual if it is not covered by the preceding paragraph. Provided, That, any employee who has rendered at least one (1) year of service, whether such service is continuous or broken, shall be considered regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists."

[19] See the case of Violeta v. National Labor Relations Commission, 280 SCRA 520.

[20] Art. 280 refers to the definition of regular and casual employment. See Violeta v. National Labor Relations Commission, 280 SCRA 520.

[21] A. M. Oreta and Co. Inc., v. National Labor Relations Commission, et al., G.R. No. 74004, August 10, 1989.

[22] De Leon v. National Labor Relations Commission, G.R. No. 70705, August 21, 1989.

[23] Ibid.

2.4 Trends Concerning Disguised Employment Relations.

2.4.1 Qualitative Evolution.

As shown in figure 1, employment relations in the Philippines have been altered as a consequence of heightened competition brought about by globalization and free trade. The quality of disguised employment has improved whenever the human resource development program and enterprise develops a type of atypical employment that will benefit such industry. Thus from the legally recognized form of atypical triangular or trilateral employment relations such as labor contracting and service or job contracting, other forms of bi-angular or bilateral relations had also developed. This is shown by the emergence of such arrangements as homework, boundary system in transport, contract work, and other similar arrangements.

2.4.2 Quantitative Evolution.

The latest survey conducted by the Department of Labor and Employment, Bureau of Labor Statistics, for the period covering 1994 to 1997 indicates that establishments in the Philippine engaged in contracting out of job, while still relatively low is on the rise. We will discuss more of this trend at the latter part of this paper.

2.5 Machinery Available to the Workers to Ensure Application of Labor Laws

2.5.1 Labor Inspectors.

To ensure compliance by the employer with the established standards for regular employment, the Department of Labor and Employment maintains inspectors in all its thirteen regional offices nationwide.[24] The inspectors, also called labor and employment officers, consist of two kinds. These are: (a) those concerned with labor standards such as compliance with minimum wage, hours of work, etc. and (b) those concerned with safety, usually engineers that inspect boilers and pressure vessels. They all work under the direct supervision of the Department's Regional Directors.

The Regional Directors have the power to issue Compliance Orders on erring employers. Under the decisions of the Philippine Supreme Court however, they are required to observe the "cardinal primary requirements" of due process before they issue a Compliance Order. These "cardinal primary requirements" are: (1) the alleged violator must first be heard and given adequate opportunity to present evidence in his

[24] The authority of the Secretary or his representative to conduct inspection is derived from Art. 128 of the Labor Code which reads:

"Art. 128. *Visitorial and Enforcement Power*. – (a) The Secretary of Labor or his duly authorized representatives, including labor regulation officers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

behalf; (2) the evidence presented must be duly considered before any decision is reached; (3) the decision should be based on substantial evidence which means evidence adequate for a reasonable mind to support a conclusion; (4) the decision is based on evidence presented in the hearing, or at least contained in the record and disclosed to the parties; (5) the decision is that of the decision-making authority and not mere views of subordinates; and (6) the decision should explain the issues involved and the reasons for the decision.

Moreover, the Order of the Regional Director may be appealed by the losing party to the Secretary of Labor and Employment.[25]

In the exercise of the "visitorial power," the Secretary of Labor and Employment may even order the stoppage of work or suspension of operations of the inspected establishment or parts of it if there exists any imminent danger to the safety and health of the worker. The employer, if at fault, may be ordered to pay the employees' wages during the work stoppage or suspension of operations. But, again, due process must be observed.

Such power of the Secretary of Labor and Employment or his authorized representatives has already been affirmed by the Philippine Supreme Court as a legitimate exercise of police power by the State.[26]

2.4.2 Arbitration

To enhance the capability of the government to extend protection to the workers, arbitration was prescribed in the Labor Code as the mode of settling labor dispute. This will be discussed at a latter part of this paper.

2.6 Practical Applications on employer-employee relations

As stated above, in regular employment, employers must observe certain legal requirements or what have come to be known as labor standards. Compliance with these legal requirements are often used by the Philippine Supreme Court as a litmus test to determine whether an employment is regular or not.

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[25] Art. 128 (b) of the Labor Code provides:

"Art. 128 (b) Notwithstanding the provision of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of the employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

An order issued by the duly authorized representative of the Secretary of Labor and Employment under this article may be appealed to the latter. In case said order involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Secretary of Labor and Employment in the amount equivalent to the monetary award in the order appealed from."

[26] See for example Aboitiz Shipping Corp. v. De la Serna, etc., G.R. No. 88538, April 25, 1990.

2.6.1 Conditions of Employment and Remuneration

Regular employment requires the employer to comply with minimum conditions of employment prescribed by law. These conditions of employment may be summarized as follows: (a) the employees wage must not be less than the regional minimum wage applicable to the place of employment;[27] (b) normal hours of work of eight hours in a day;[28] (c) one (1) day rest period after six consecutive days of work;[29]; (d) regular pay on holidays; [30] (e) five days service incentive leave each year;[31] (f) 13th month pay;[32] (g) coverage by medical care, social security and employees compensation;[33] and (h) retirement benefits upon reaching the age of sixty years or sixty-five years for compulsory retirement in the amount equivalent to one-half month pay for every year of service rendered.[34] With the above entitlement, it is important for an employee to be classified as regular employee.

Conditions of employment and remuneration are among the criteria used by the Supreme Court in the determination of regular employment. The Supreme Court in a leading case ruled that "in determining the existence of employer-employee relationship, the elements that are generally considered are the following: (a) selection and engagement of employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished."[35]

In applying these criteria, the Supreme Court ruled in various cases that: (a) "the primary standard of determining regular employment is the reasonable connection between the activity performed by the employee in relation to the business or trade of the employer"[36]; (b) Acedillo's work as a helper-electrician was an activity necessary or desirable in the usual business or trade of petitioner, since refrigeration requires considerable electrical work; he is therefore a regular employee"[37]; (c) "the repeated re-hiring and the continuing need for the services of project employees over a long span of time have made them regular employees"[38]; and (d) "failure of the employer to file termination papers after every project completion proves that the employees are not project employees."[39]

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[27] The Philippines do not have a national minimum wage rate. The fixing of minimum wages in the Philippines are by region through the Regional Tripartite Wage Boards. The National Tripartite Wage Board is simply an affiliate body where exemption from payment of regional wage rates may be secured by distress employer.
[28] See Arts.83 to 89 of the Labor Code.
[29] See Arts. 91 to 92 of the Labor Code.
[30] See Art. 94 of the Labor Code.
[31] See Art. 95 of the Labor Code.
[32] See Presidential Decree No. 851, December 16, 1975.
[33] See Art. 209 of the Labor Code.
[34] See Republic Act No. 7641
[35] Brotherhood Labor Unity Movement of the Philippines, et al. v. Zamora, G.R. No. 48645, January 7, 1987.
[36] Philippine Telegraph and Telephone Company v. National Labor Relations Commission, 272 SCRA 596.
[37] J & D.O. Aguilar Corporation v. National Labor Relations Commission, 269 SCRA 596.
[38] Tomas Lao Construction v. National Labor Relations Commission, 278 SCRA 716.
[39] Ibid.

2.6.1.i Special Conditions of Employment for Women

The Labor Code of the Philippines also provides special conditions of employment for women. These conditions of employment however are generally perceived as a cause for discrimination against the hiring women as they constitute additional cost on the part of the employer.

For instance, the Labor Code prohibits night work for women as follows: (a) in any industrial undertaking or branch thereof between ten and six o'clock in the morning the following day; (b) in any commercial or non-industrial undertaking or branch thereof, other than agricultural, between midnight and six o'clock in the morning of the following day; or (c) in any agricultural undertaking at night-time unless she is given a period of rest of not less than nine (9) consecutive hours.[40]

The prohibition of night work for women employees however admits of exceptions. These are: (a) in cases of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquake, epidemic or other disasters or calamity, to prevent loss of life or property, or in cases of force majeure or imminent danger to public safety; (b) in case of urgent work to be performed on machineries, equipment or installation, to avoid serious loss which the employer would otherwise suffer; (c) where the work is necessary to prevent serious loss of perishable goods; (d) where the woman employee holds a responsible position of managerial or technical nature, or where the woman employee has been engaged to provide health and welfare service; (e) where the nature of the work requires the manual skill and dexterity of women workers and the same cannot be performed with equal efficiency by male workers; (f) where the women employees are immediate members of the family operating the establishment or undertaking; and (g) under other analogous cases exempted by the Secretary of Labor and Employment in appropriate regulations.[41]

The law also requires employers with women employees to provide the following facilities: (a) provide seats proper for women and permit them to use such seats when they are free from work and during working hours, provided they can perform their duties in this position without detriment to efficiency; (b) to establish separate toilet rooms and lavatories for men and women and provide at least a dressing room for women; (c) to establish a nursery in a workplace for the benefit of the women employees therein; and (d) to determine appropriate minimum age and other standards for retirement or termination in special occupations such as those of flight attendant.[42]

A woman employee who has rendered an aggregate service of at least six (6) months for the last twelve (12) months enjoys a total of eight (8) weeks maternity leave benefit with full pay.[43] The employer must first advance the benefit and then seeks reimbursement from the Social Security System. Still the employer entails by hiring a temporary replacement.

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[40] Art. 130 of the Labor Code.
[41] See Art. 131 of the Labor Code.
[42] See Art. 132 of the Labor Code.
[43] The original provision of the Labor Code grants maternity leave for six weeks. This was increased to eight weeks by Republic Act No. 7322 (March 30, 1992) . Moreover, R.A. 8187, June 11, 1996 grants seven days paternity leave with full pay to expectant father.

The law also prohibits the following discriminatory acts against women: (a) payment of lower compensation, including wage, salary or other form of remuneration and fringe benefits, to a female employee as against a male employee, for work of equal value; and (b) favoring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes.[44] Nor is stipulation against marriage allowed.[45]

The law declares as an unlawful act the following; (a) to deny any woman employee the benefits provided for by law or to discharge any woman employed by his for the purpose of preventing her from enjoying any of the benefits provided under the labor code; (b) to discharge such woman on account of her pregnancy, or while on leave or in confinement due to her pregnancy; and (c) to discharge or refuse the admission of such woman upon returning to her work for fear that she may again be pregnant.[46]

Women who are permitted or suffered to work, with or without compensation, in any night club, cocktail lounge, massage clinic, bar or similar establishment, under the effective control or supervision of the employer for a substantial period of time are considered employees of such establishment for purposes of labor and social legislation.[47]

Sexual harassment at work is also an actionable wrong.[48] Under the law, either a male or a female employee may be a victim of sexual harassment. Sexual harassment may be committed by an employer, co-employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said act.[49]

According to the Supreme Court, commission of sexual harassment is a valid reason to dismiss an employee.[50] This, in a sense, is an additional ground to terminate the services of a regular employee.

2.6.1.ii Special Conditions of Employment of Minors

Minors may be employed only under the following conditions: (a) no child below fifteen (15) years of age shall be employed, except when he works directly under the sole responsibility of his parents or guardian, and his employment does not in any way interfere with his schooling; (b) a person between fifteen (15) and eighteen (18) years old may be employed for such number of hours and such periods of the day

[44] See Art. 135 of the Labor Code. R.A. No. 7877 (February 14, 1995) is the Philippine law against sexual harassment.
[45] See Art. 136 of the Labor Code.
[46] See Art. 137 of the Labor Code.
[47] See Art. 138 of the Labor Code.
[48] The Philippine Law concerning sexual harassment is Republic Act No. 7877 (February 14, 1995).
[49] See for example, Azucena, C. A. (1997) **Everyone's Labor Code,** Rex Printing Co., Inc., Quezon City, Philippines, p. 95.
[50] Villarama v. National Labor Relations Commission, et al., G,R, No. 106341, September 2, 1994.

as determined by the Secretary of Labor and Employment; and (c) no minors below eighteen (18) years old may be employed in hazardous or deleterious work as may be determined by the Secretary of Labor and Employment.[51]

The law also prohibits discrimination against minors[52]

2.6.2 Occupational Safety and Health Conditions

Occupational safety and health conditions provided by the Labor Code could be divided into two categories. These are: (a) minimum occupational safety and health standards at the work place; and (b) compensation for work related injuries.

2.6.2.i Minimum Occupational Safety and Health Standard at the Work Place

Regular employees enjoy protection against occupational safety and health hazards at the work place.

Accordingly, the law directs every employer to keep in his establishment such first-aid medicines and equipment as the nature and conditions of work may require in accordance with such regulations as the Department of Labor and Employment may require.[53]

Also, the law imposes as a duty of every employer to furnish his employees in any locality with free medicine and dental attendance consisting of (a) the service of a full-time registered nurse when the number of employees exceeds fifty (50) but not more than two hundred (200) except when the employer does not maintain hazardous workplaces, in which case the services of a graduate first-aider shall be provided for the protection of the workers, where no registered nurse is available; (b) the services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic, when the number of employees exceeds two hundred (200) but not more than three (300) hundred; and (c) the services of a full-time physician, dentist and a full-time registered nurse as well as a dental clinic, and an infirmary or emergency hospital with one bed capacity for every one hundred (100) employees when the number of employees exceeds three hundred (300).[54]

In addition, the physician engaged by an employer shall develop and implement a comprehensive occupational health program for the benefit of the employees of his employer.[55]

The Secretary of Labor and Employment may, by appropriate orders, set and enforce mandatory occupational safety and health standards to eliminate or reduce occupational safety and health hazards in all workplaces and institute new and update existing programs to ensure safe and healthful working conditions in all places of

[51] See Art. 139 of the Labor Code.
[52] See Art. 140 of the Labor Code.
[53] See Art. 156 of the Labor Code.
[54] See Art. 157 of the Labor Code.
[55] See Art. 159 of the Labor Code

employment.[56] The Labor Code mandates the Department of Labor and Employment to conduct continuing studies and researches to develop innovative methods, techniques and approaches for dealing with occupational safety and health problem.[57]

To ensure that regular employees are protected against occupational hazards in employment, the rules implementing the Labor Code requires employers and workers to set up safety committees. Moreover, safety inspections are done annually by the Department of Labor and Employment, more particularly through its regional offices.

2.6.2.ii Compensation for Work Related Injury

Regular employees are also compensated in case they suffer work-related injuries. The Labor Code created the State Insurance Fund to ensure payment of claims for work-related injuries and illnesses. A tripartite Employees' Compensation Commission administers the fund.[58]

Contribution to the fund is solely the responsibility of the employer. The employer enrolls his regular employees with the system, the Social Security System (SSS) for the private sector and Government Service Insurance System (GSIS) for the public sector, and he is accordingly assess contribution depending on the number of employees and their respective monthly wage rates. Where a regular employee who was not enrolled with the system suffers a work-related injury or illness, he may still file a claim with the Commission and if the injury or illness is found work-related, the Commission will compensate him and then go against the employer who failed to register such employees.

The administrator of the employees compensation program in the Philippines is essentially non-adversarial. A worker who suffered work-related injury or illness may file his claim with the System as intimated above.[59] He will then be paid depending on the seriousness of his injury and his monthly salary rate. In case the claim is rejected, the aggrieved employee may appeal such rejection to the Commission.

But where the injury or illness, even if occurring in the work place, was due to personal act or notorious negligence of the employee, he may not be compensated for such injury.[60] Thus in one case the Supreme Court ruled that "when a worker, in a state of intoxication, ran amock, or committed an unlawful aggression against another, inflicting injury to the latter, who, however, fought back and in the process killed the aggressor, the circumstances of the death of the aggressor could be categorized as a deliberate and willful act, on his own life directly attributable to him, is not compensable."[61]

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[56] See Art. 162 of the Labor Code.
[57] See Art. 163 of the Labor Code.
[58] See Arts. 166 to 175 of the Labor Code.
[59] The original Workmen Compensation in the Philippines was adversarial in nature. The worker must prove that his injury was work-related. Then the old Workmen Compensation Commission renders a decision ordering the employer to compensate the workers. This often result to delay in the payment in the much needed payment as such order may be appealed to the courts.
[60] See Paez v. CWW, et al., G.R. No. L-18438, March 30, 1963.
[61] See Mabuhay Shipping Service v. NLRC, G.R. No. 94167, January 21, 1991.

2.6.3 Social Security

Depending on the employees covered, the Philippines implements two (2) social security programs. The Social Security System or SSS administers the program for employees of private corporations while the Government Service Insurance System or GSIS for employees of the government.[62]

The law requires private employers to enroll their regular employees with the Social Security System while government employees are enrolled with the Government Service Insurance System. This scheme is contributory in that both the employer and the employee are assessed by the system. The practice is for employer to withhold from the salary of his worker the latter's contribution to the funds and then he (employer) remits the worker's share together with his (employer) contribution to the system.

The system grants various benefits to its members, compensation for injury or illness and retirement benefits to loan privilege. Simultaneous recovery of benefits under the employees' compensation program of the Labor Code and under the Social Security law is allowed.[63] Also, retirement benefits granted by the system is in addition to those provided for by the Labor Code.

Self-employed workers may also enroll themselves with the Social Security System. They must however pay both the employer and employee contribution.

2.6.4 Freedom of Association

In regular employment, freedom of association of the employees is a constitutionally guaranteed right. In fact in the Philippines, the organizational mass base of trade unions are regular employees. This is because of the preference given by law to collective bargaining as a mode of fixing or laying down terms and conditions of employment.

The Labor Code allows all kinds of workers, regardless of the type of employment to form and join labor organizations.[64] The law however, distinguishes the kind of organization that such workers may join.

Regular Employees

As an instrument of an import-substitution strategy for economic development, the Labor Code promotes collective bargaining as a mode of creating demands in the domestic market as earlier mentioned in this paper. The provisions of

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[62] See Commonwealth Act No. 186 as amended by Republic Act No. 4948. The Supreme Court has ruled that the said Acts bar the creation of any insurance or retirement plan – other than the Government Service Insurance System – for government officers and employees, in order to prevent undue and iniquitous proliferation of such plan. Conte v. Commission on Audit, 264 SCRA 19.

[63] Opinion of the Secretary of Justice dated May 23, 1989 and reiterated in the opinion dated January 12, 1990.

[64] Book V, Rule II, Sec. 3 of the Rules and Regulations Implementing the Labor Code reads:

"Sec. 3. All other workers including ambulant, intermittent and other workers, the self-employed, rural workers and those without any definite employers may form workers associations for their mutual aid and protection and for other legitimate purposes."

the Labor Code on labor relations therefore are aimed at organizing employees for the purpose of collective bargaining. This also means the strengthening of trade unionism mainly for the purposes of collective bargaining.

Regular employees are allowed to form or join labor organizations of their own choosing for collective bargaining and other legitimate purposes.[65] To facilitate the organization of regular employees into unions, the law allows them to either affiliate themselves directly with an existing federation [66]or national union or form a separate or independent union.

2.6.5.i Federation or national union

For a trade union to qualify as a federation or national union, it must comply with the following legal requirements: (a) it must have a resolution of affiliation of at least ten (10) locals or chapters. Such locals or chapters must be duly recognized or certified collective bargaining representative in the establishment where it seeks to operate; and (b) it must submit the names and addresses of the companies where the locals or chapters or affiliates operate and the list of all the members in each company involved.[67]

To facilitate the unionization of regular employees, an existing federation or national union simply issues a charter certificate in favor of such local or chapter. With such charter certificate, the local or chapter becomes a legitimate labor organization and it may then demand recognition as a collective bargaining representative in such collective bargaining unit.[68]

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[65] Book V, Rule II, Sec. 2 reads:

"Sec. 2. *Who may join labor organizations.* – All persons employed in commercial, industrial and agricultural enterprises, including employees of government-owned or controlled corporations without original charters established under the Corporation Code, as well as employees of religious, charitable, medical or educational institutions whether operating for profit or not, shall have the right to self-organization and to form, join or assist labor organizations for purpose of collective bargaining; provided, however, that supervisory employees shall not be eligible for membership in a labor organization of the rank-and-file employees but may form, join or assist separate labor organizations of their own. Managerial employees shall not be eligible to form, join or assist any labor organization for purposes of collective bargaining. Alien employees with valid working permits issued by the Department may exercise the right to self-organization for purpose of collective bargaining if they are nationals of a country which grants the same or similar rights to Filipino workers, as certified by the Department of Foreign Affairs.

For the purpose of this Section, any employee, whether employed for a definite period or not, shall, beginning on the first day of his service, be eligible for membership in any labor organization."

[66] A federation under the Labor Code is a trade union with at least ten (10) locals or chapters. It may be national in scope or concentrated only in one area. See Book V, Rule 3, Secs. 1 and 2 of the Rules Implementing the Labor Code.

[67] See Book V, Rule IV, Sec. 2 of the Rules Implementing the Labor Code.

[68] The declared policy of the state is that recognition as the exclusive collective bargaining representative in non-litigious proceeding and, as far as practicable, shall be free from technicalities of law and procedure. The most important factor for determination is that the said exclusive representative enjoys the majority support of the employees in the bargaining unit. The modes of determining such exclusive bargaining representative are: (a) voluntary recognition by the employer in cases where there is only one legitimate labor organization operating within the bargaining unit; or (b0 through certification election, run-off or consent election.

2.6.5.ii Registration of an independent local union.

The law also allows regular employees in a collective bargaining unit to form an independent union. To be registered as such, the law requires the following: (a) the list of officers and the minutes of the organizational meeting including the list of workers who participated in such meeting; (b) the number of employees and names of all its members comprising at least twenty percent (20%) of the employees in the bargaining unit where it seeks to operate; (c) copies of annual financial reports; and (d) copies of its constitution and by-law, minutes of its adoption or ratification, and the list of members who participated in it.[69] After registration, such union acquires legal personality and it may likewise then demand recognition as the exclusive collective bargaining representative of the employees in such collective bargaining unit.

Non-regular employees

Non-regular employees or workers without definite employers on the other hand may only form workers association for mutual aid and protection and other legal purposes. They cannot engage in collective bargaining. In other words, their right to association, as compared to that exercised by regular employees, is limited.

2.6.6 Collective Bargaining

Collective bargaining in the Philippines is the exclusive realm of regular employees. In it broad interpretation, it refers to the interaction among the actors identified by John Dunlop as the government, employers and their association and employees and their unions that will eventually result to webs of rules that will govern their relations.[70] In its narrow interpretation, it refers to the procedure at the enterprise level to formulate and administer a binding collective contract **between the employer and employees**.[71] It is intimately linked with the concept of regular employment.

This distinction is important. The Labor Code imposes upon the employer the duty to bargain collectively with the labor organization enjoying majority support in the company. This means that the workers can in fact legally demand that the employer bargain collectively with them. Thus said the Supreme Court, "the duty to bargain collectively arises only between the employer and its employee. Where neither party is an employer nor an employee of the other, no such duty exists. Needless to add, where there is no duty to bargain collectively, the refusal to bargain violates no right."[72]

Stated otherwise, suppose an association of taxi drivers under the boundary system concludes an agreement with the owner of the taxi the agreement in that case is a simple civil contract, not a collective agreement. This means that unlike a collective agreement that is impressed with public interest, the agreement between the taxi drivers and the operators constitutes legally a simple civil obligation. It is

[69] Ibid.
[70] See for example Dunlop, J. (1950) **Industrial Relations System**, Carbondale and Edwardville, Southern Illinois University Press.
[71] Azucena, C.A. (1997), ibid., p. 207.
[72] See Allied Free Workers Union v. Compana Marimima, 19 SCRA 258.

enforced not through arbitration that is generally perceived as more expeditious but through the regular courts.

2.6.7 Access to Labor Justice

As an added protection to regular employment, the Labor Code insures them access to labor justice. It institutionalized arbitration as the principal mode of settling labor disputes. There are generally two (2) types of arbitration in the Philippines. These are: (a) compulsory arbitration; and (b) voluntary arbitration.

2.6.7.i Compulsory Arbitration

A tripartite body called the National Labor Relations Commission was created to take charge of arbitrating labor disputes.[73] The Commission has jurisdiction over violations of labor laws and social legislation.

A regular employee may file a complaint for violations of any labor law before the arbitration branch of the Commission having jurisdiction over the case. The case is then assigned to a Labor Arbiter for hearing and decision.

The law requires the observance of due process before a decision is rendered. As ruled by the Supreme Court, the Labor Arbiter must comply with procedural and substantive due process to render a valid judgment.

Procedural due process

Procedural due process refers to the mode of procedure which government agencies, including accredited voluntary arbitration, must follow in the enforcement and application of law. Procedural fairness should be guaranteed.

The Supreme Court defined "procedural due process" as "the duty to accord a hearing, to give interested parties the opportunity to present case and evidence."[74] Its essential elements are: (a) there must be an impartial court or tribunal clothed with judicial power to hear and determine the matter before it; (b) jurisdiction must be lawfully acquired over the person of the defendant and over the property which is subject of the proceedings; (c) the defendant must be given an opportunity to be heard; and (d) judgment must be rendered upon lawful hearing.

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[73] The pertinent provisions of Art. 213 of the Labor Code reads:

"Art. 213. *National Labor Relations Commission.* – There shall be a National Labor Relations Commission which shall be attached to the Department of Labor and Employment for program and policy coordination only, composed of a Chairman and fourteen (14) Members.

Five (5) members each shall be chosen from among the nominees of the workers and employers organizations, respectively. The Chairman and the four (4) remaining members shall come from the public sector, with the latter to be chosen from among the recommendees of the Secretary of Labor and Employment.

Upon assumption into office, the members nominated by the workers and employers organizations shall divest themselves of any affiliation with or interest in the federation or association to which they belong.

[74] Ang Tibay v. Court of Industrial Relations, 69 Phil. 635.

Substantive due process

Substantive due process on the other hand operates to negate arbitrary legislation, because, if all that the due process clause required is proper procedure, then life, liberty, or property could be destroyed arbitrarily provided proper formalities are observed.

The Supreme Court defined substantive due process as "action is valid based on law or rule with proper objective or purpose."[75] Its essential requisites are: (a) duty to accord a hearing, to give each interested party as opportunity to present his own cause and submit evidence to support thereof; (b) duty to consider the evidence presented; (c) duty to act on its or his own independent consideration of the law and facts of the controversy; (d) duty of having its findings or conclusions supported by substantial evidence; and (e) duty to consider only the evidence presented at the hearing or at least contained in the record and disclosed to the parties.

The order or decision of the Labor Arbiter may be appealed by the losing party to the National Labor Relations Commission. The Commission may sit *in banc* or in five divisions. The Commission sits *in banc* only when promulgating rules that will govern the proceedings in the Commission proper as well as before the Labor Arbiter.

In deciding appealed cases, however, the Commission sits in divisions. The First, Second and Third Divisions handle cases coming from Metro-Manila and Luzon, the Fourth Division cases coming from the Visayas and the Fifth Division cases from Mindanao.[76] Each Division is composed of a Presiding Commissioner representing the public and a Commissioner each representing the workers and employers sectors, respectively.

The decision or order of the Commission may still be appealed by the losing party to the regular courts through the Court of Appeals and finally the Supreme Court.

2.6.7.ii Voluntary Arbitration

As originally envisioned, voluntary arbitration is an extension of the grievance machinery contained in a collective bargaining agreement.[77] Where the parties are unable to come to terms concerning a dispute raised as a grievance in accordance with the collective agreement, the law requires that the grievance be resolved by a voluntary arbitrator or panel of voluntary arbitrators.

Voluntary arbitration as a mode of dispute settlement has been expanded so as to cover even disputes outside of the collective agreement, provided there is agreement between the parties to submit to arbitration. Under this system, the parties to a dispute must agree on who will be their voluntary arbitrator or panel of arbitrators. If they fail to agree, the government has a list of voluntary arbitrators

[75] Ibid.
[76] The 7000 islands of the Philippines are group into three (3) major grouping, namely: Luzon, Visayas and Mindanao.
[77] See Art. 260 of the Labor Code.

where the parties may select as arbitrator or panel of arbitrators mutually acceptable to them.

Voluntary arbitrators in the Philippines have original and exclusive jurisdiction on: (a) all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement; and (b) those arising from the interpretation or enforcement of company personnel policies.[78] In addition, voluntary arbitrators may also have jurisdiction over all other labor disputes upon agreement of the parties.[79]

Voluntary arbitration is also required by law to comply with both procedural and substantive due process. A voluntary arbitration decision or award is final although pursuant to a ruling of the Supreme Court, voluntary arbitration award may be appealed to the Court of Appeals and then to the Supreme Court itself only on: (a) constitutional issues and law; and (b) where the Voluntary Arbitrator committed grave abuse of discretion amounting to lack of jurisdiction.[80]

2.7 Current Issues concerning Protection of Regular Employment

Regular employment in the Philippines enjoys adequate legal protection mainly through standard setting power of the state. As a consequence of globalization however, violations of labor standards remain alarmingly high and still increasing. As shown by Table 4, for the period 1997, 1998 and part of 1999 the establishments inspected by the Department of Labor and Employment were 60, 134, 37,080 and 9,132 respectively. The establishments found violating labor standards were 30,770, 21,538 and 5,295 respectively. This means that 51.2 percent, 58.1 percent and 58.0 percent, respectively of all establishments inspected, were found violating labor standards.

Surprisingly however the number of new cases filed for violations of labor standards as shown by Table 5 declined for the period from 1997, 1998 and part of

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[78] The provisions of law concerning the jurisdiction of voluntary arbitrators reads:

"Art. 261. *Jurisdiction of Voluntary Arbitrators or panel of Voluntary Arbitrators.* – The voluntary arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of personnel policies referred to in the immediate preceding article. Accordingly, violations of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement. for purposes of this article, gross violations of Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement.

The Commission, its Regional Offices and the Regional Directors of the Department of Labor and Employment shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the Voluntary Arbitrator or panel of Voluntary Arbitrators and shall immediately dispose and refer the same to the Grievance Machinery or Voluntary Arbitration provided in the Collective Bargaining Agreement."

[79] Art. 262 of the Labor Code reads:

Art. 262. *Jurisdiction over other labor disputes.* – The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlock."

[80] See Luzon Development Bank v. Association of Luzon Development Bank Employees, et al., G.R. No. 120319, October 6, 1995.

1999 from 17,596, 12,303 and 2,833 respectively. As shown by Table 6, new notices of strike filed declined for a period 1997, 1998 and part of 1999 from 932, 811 and 194 respectively. For the same period, new strikes declared also declined from 93, 92 and 11 respectively. This means that regular employees had tolerated violations of labor standards by not filing, for reasons only known to them, cases against the employer.

The issue on hand is problematic. As a result of heightened competition brought about by globalization, employers in the Philippines are trying their best to keep their operation afloat. To such extent, they resort to ignore or violate labor standards enjoyed by regular employees in order to survive.

Employees on the other hand appeared to be fully aware of the crisis their companies are facing. The issue they are facing is even worst. It is a choice between unemployment and protection. If they complain, then they risk losing their jobs. Already, there is a long unemployment queue waiting to take the place of resigning or dismissed regular employees.

The question that should therefore be addressed is how to strike a balance between survival of the companies and protection of employees. For protection to employees will be meaningless if the end result will be more unemployment.

III Triangular or Trilateral Employment Relations

3.1 Job or Service Contracting and Labor Contracting

Triangular or trilateral employment relation is the second level in figure 1. As the term suggests, there are three (3) major actors in triangular or trilateral relations. These are: (a) employer who is the principal; (b) contractor or subcontractor; and (c) the employees.

The Labor Code recognizes triangular or trilateral employment relations as an employment arrangement that should be regulated for the protection and benefit of the workers.[81] Thus said the Supreme Court, "while it is true that the parties to a contract

[81] Art. 106 of the Labor Code reads:

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

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

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

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machinery, work premises,

may establish any agreements, terms and conditions that they may deem convenient, the same should not be contrary to law, morals, good customs, public order or public policy. The relations between capital and labor are not merely contractual, impressed as they are with so much public interest that the same should yield to the common good."[82]

The direct employer in a triangular or trilateral employment relations is legally considered independent contractor. The Supreme Court defined "independent contractors" as those who exercise independent employment, contracting to do a piece of work according to their own methods without being subject to control of their employer except as to the result of their work."[83]

Employees of contractors or subcontractors are entitled to the benefits enjoyed by regular employees. The law requires compliance with various labor standards, including minimum wage, by the contractor or subcontractor. Additionally, the principal employer is legally tasked to insure compliance by the contractor or subcontractor of such labor standard laws.

As compared to regular employees however, the tenure of employees of contractors or subcontractor is often precarious and there is merit in the observation that they do not enjoy security of tenure.[84] They may lose their jobs when the contract of their direct employer (the contractor or sub-contractor) is not renewed.

In the Philippines, there are two (2) kinds of triangular or trilateral economic arrangements. These are: (1) job or service contractor; and (2) labor contractor.

Job or service contracting exists when a principal employer enters an agreement with a contractor or subcontractor for the latter to perform a job or service. The contractor or subcontractor supplies the employees who will perform such particular job or service. The most common example of this is the engagement of a security agency to secure the premises of the company.

Labor contracting on the other hand refers to a situation were the principal employer concludes an agreement with a manpower agency for the supply of manpower. The essential requisites for a valid labor contracting are: (a) such contractor must be engaged in business of supplying manpower; and (b) he must have substantial capital.[85]

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among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him."

[82] See Philippine Telegraph and Telephone Company v. NLRC. 272 SCRA 596.

[83] See Naguiat v. NLRC, 269 SCRA 564.

[84] Under Department Order No. 10 issued on April 1997 by the Secretary of Labor, an employee of the contractor or subcontractor also enjoys security of tenure and could not be dismissed except for cause. Among the justified causes is the expiration or termination of the commercial employment contract. In practice this commercial contract may be terminated at well by the principal thus rendering ineffective the security of tenure under such Department Order.

[85] See Art. 106, of the Labor Code.

3.2 Labor-Only Contracting

"Labor-only contracting" however is prohibited by law. There is labor only contracting where: (a) the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal; (b) he does not have substantial capital or investment to actually perform the job, work or service under its own account and responsibility; and (c) the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal.[86]

3.3 Trends

Again, as a consequence of heightened competition which was felt, in the later part of the decade 1980, many of the surviving Philippine enterprises began reorganizing their operations.[87] Subcontracting then emerged and was generally viewed as a response to increasing market competition due to globalization. In particular, subcontracting became a major component of the flexibility measures adopted by most establishments to cope with the fluctuations in the demand for their products and to reduce their production cost by maintaining lean regular work force.[88]

Traditionally, subcontracting was confined mainly to activities incidental to the operations of the business such as security, janitorial and maintenance service. In recent years however, subcontracting has evolved into complex arrangements and has encroached into areas of work regularly performed by regular employees such as the production process and related activities.

Moreover, large unionized corporations have begun using subcontracting as a response to globalization. The Manila Electric Company (MERALCO), the country's largest utility company, contracted out its meter-reading function and accordingly dismissed all its meter readers. The Philippine Long Distance Company (PLDT), the country's largest communication company, contracted out its line laying function, dismissed all its linemen. Philippine Appliance Corporation (PHILACOR), the country's largest appliance manufacturing company, contracted out its delivery service, dismissed all its delivery boys. Shoe Mart (SM), the country's largest retail trade company, began requiring producers/suppliers to assign to its various outlets merchandisers to promote their respective products and at the same time to save on cost.

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[86] See Art. 106, of the Labor Code and Department Order No. 10. April, 1997.

[87] Structural adjustments or economic policy reforms intended to expedite the integration of the Philippine to the world economy were implemented earnestly during President Aquino's watch or in 1986. These reforms include Tariff reduction, budget deficit reduction, savings and financial reforms, etc. During the initial implementation, uncompetitive firms were forced to close down. For more of the Philippine experience see Macaraya, B. and R. Ofreneo (1993) "Structural Adjustment and Industrial Relations: The Philippine Experience", **Philippine Labor Review**, vol. XIX, no. 1, pp.1-34.

[88] For more on external labor flexibility please see Torres, C. I. (1993) "External Labor Flexibility: The Philippine Experience", **Philippine Journal of Labor and Industrial Relations**, vol. XV, no. 1 and 2, pp. 97-130.

3.3.1 Quantitative Evolution

The latest survey (1997) of the Department of Labor and Employment indicates that in the Philippines the number of firms contracting out part of their production process or related activities to external contractors is still relatively low.[89] The data suggest that from 1994 to 1997 less than ten percent (10%) of the total sample establishments were engaged in subcontracting (Table 6). However, for the said period, the proportion of establishments relying on outside contractors for particular services has risen slowly from 5.0 percent in 1994 to 8,7 percent in 1997.

The survey suggests an increased by 40 percent in the total establishments with subcontractors from 391 in 1996 to 547 in 1997. The number of subcontractors engaged during such period also increased by 85 percent from 1,190 in 1996 to 2,202 in 1997. The average number of subcontractors engaged by each establishment also increased from three (3) subcontractors in 1996 to four (4) in 1997.

The survey also shows that most companies prefer the services of companies/agencies than individual subcontractors. The data suggest that 1,180 or 53% of subcontractors hired in 1997 were companies/agencies, about 644 or 29% home-workers and 378 or 17% individual persons.

3.3.2 Qualitative Evolution

The quality of subcontracting is observed to be also improving. From the traditional practice confined mainly to incidental activities such as security, janitorial and maintenance services, it now includes the production process and related activities.

Table 6 also suggests that a considerably large number of subcontractors in 1997, 1,147 or 52.1%, were hired to jobs traditionally performed by regular employees in the production process. Other jobs contracted out were related to marketing 103 or 4.68%, packaging 82 or 3.72%, transport 136 or 6.18%, clerical and encoding 123 or 5.58% and a variety of other activities 611 or 27.7% peculiar to certain sector such as bill collector or meter-reading in the case of a utility company.

Contracting out of jobs in the production process and related activities appeared fairly common in the construction industry, mining and quarrying and manufacturing. Measured in terms of ratio of the number of establishments with subcontractor to total industry sample, the survey suggests that the highest proportion was in construction 27.4%, followed by mining and quarrying 18.0% and manufacturing 14% (Table 7). The share of other industries was less than ten percent each with the lowest proportion recorded in community and social services 2.7% and agriculture, fisheries and forestry 4.6%.

The types of jobs contracted out vary by industry. In the construction industry, the bulk 69.3% of jobs contracted out was the production process or construction jobs and in mining and quarrying, production related 46.1% and transport 26.9% (Table 8).

[89] The survey excludes security, janitorial and maintenance service. For more see Bureau of Labor and Employment Statistics (1999) **Labstat Updates**, vol. 2, no. 14, Department of Labor and Employment, Manila.

In manufacturing, the types of jobs contracted out were more diversified to include production process 70.9%, packaging 5.8%, marketing 5.6% and transport 5.3% among others. Contracting out of clerical and encoding services 26.4% were confined mostly among establishments engaged in financing, real estate and business services.

Large establishments employing 100 and more employees account for nearly three-fourth 394 or 72.0% establishments utilizing subcontractors (Table 9). They also account for 1,790 or 81.3% of the total subcontractors hired in 1997. In such large establishments subcontractors were hired to perform a wide variety of jobs the bulk of which were production process and production related 937 (Table 10).

As to the ownership, establishments with foreign partner appear more dependent on the services of outside contractors than establishments without foreign partners. The survey suggests that 21.8 percent of sample establishments with foreign capital use subcontractors while only 6.8 percent for those without foreign capital (Table 9).

Also, establishments engaged in export trade are more dependent on subcontractors than those catering solely to the domestic market. About 23% of export-oriented establishments use subcontractors in production process while a miniscule 6.2% for those catering solely to domestic market.

3.4 Concept in Law and Jurisprudence

The triangular or trilateral employment relations are legally conceived as a commercial arrangement between the principal employer and the contractor. The employees hired under such arrangement are legally considered employees of the contractor. Said the Supreme Court, "under the general rule set out in the first and second paragraph of Art. 106, an employer who enters into a contract with a contractor to perform work for the employer does not thereby create an employer-employee relationship between himself and the employees of the contractor. Thus, the employees of the contractor remain the contractor's employees and his alone."[90]

Unlike other commercial transactions, commercial employment arrangement is regulated by law. Contractors are required to register with the Department of Labor and Employment.[91]

To qualify as legitimate contractor, a contractor or subcontractor must: (a) carry on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility, according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of work except as to the results; (b) has substantial capital or investment[92]; and (c) the agreement between the principal and

[90] See Philippine Bank of Communications v. National Labor Relations Commission, Ricardo Orpiada, et al., G.R. No. 66598, Dec. 19, 1986.
[91] See Secs. 19 to 25 of Department Order No. 10, issued by the Secretary of Labor and Employment on April 1997.
[92] Sec. 4, of Department Order No. 10 defines "substantial capital or investment" as referring to the adequacy of resources actually and directly used by the contractor or subcontractor in the performance or completion of job, work or service contracted out. It may refer to capital stocks and subscribed

contractor assures the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits.[93]

To protect the interest of regular employees, the law defines the instances when a principal may hire contractors as follow: (a) works or services temporarily or occasionally needed to meet abnormal increase in the demand of products or services, provided that the normal production capacity or regular workforce of the principal cannot reasonably cope with such demands; (b) works or services temporarily or occasionally needed by the principal for undertakings requiring expert or highly technical personnel to improve the management or operations of an enterprise; (c) services temporarily needed for the introductory or promotion of new products, only for the duration of the introductory or promotional period; (d) work or services not directly related or not integral to the main business or operation of the principal, including casual work, janitorial, security, landscaping, and messenger services, and work not related to manufacturing processes in manufacturing establishments; (e) services involving the public display of manufacturers' products which do not involve the act of selling or issuance of receipts or invoices; (f) specialized works involving the use of some particular, unusual or peculiar skills, expertise, tools or equipment the performance of which is beyond the competence of the regular workforce or production capacity of the principal; and (g) unless a reliever system is in place among the regular workforce, substitute services for absent regular employees, provided that the period of service shall be coexistence with the period of absence and the same is made clear to the substitute employee at the time of engagement. [94]

Moreover, the law prohibits the following commercial employment arrangements: (a) labor-only contracting; (b) contracting out of work which will displace employees of the principal from their jobs or reduce their regular work hours; (c) contracting out of work with a "cabo"[95] (d) taking undue advantage of the economic situation or lack of bargaining strength of the contractual employee, or undermining his security of tenure or basic rights, or circumventing the provisions of regular employment; (e) contracting job, work or service through an "in-house agency"[96] ; (f) contracting out of job, work or service directly related to the business or operation of the principal by reason of a strike or lockout whether actual or imminent; and (g) contracting out of job, work or service when not justified by the

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capitalization in the case of corporations, tools, equipment, implements, machinery, uniforms protective gear, or safety devices actually used in the performance of the job, work or service contracted out. It likewise includes operating costs, administrative costs such as training and overhead costs, and such expenses as are necessary to enable the contractor or subcontractor to exercise control, supervision or direction over its employees in all aspects of performing or completing the job, service or work contracted out. The phrase, however, excludes all capital and investment the contractor or subcontractor may have which are not actually and directly used in the conduct of its business, or any gratuitous assistance, financial or otherwise, it may have received from the principal.

[93] ibid.

[94] See Sec. 6, Department Order No. 10.

[95] Sec. 1, Rule 1 (oo), Book V of the Rules and Regulations Implementing the Labor Code defines "cabo" as referring to a person or group of persons or to a labor group which, in the guise of a labor organization, supplies workers to an employer, with or without any monetary or other consideration whether in the capacity of an agent of the employer or as an ostensible independent contractor.

[96] Sec. 4(g) of Department Order No. 10 defines "in-house agency" as referring to a contractor or subcontractor engaged in the supply of labor which (a) is owned, managed or controlled by the principal; and (b) operates solely for the principal owning, managing, or controlling it.

exigencies of the business and the same results in the reduction or splitting of the bargaining unit.[97]

Finally, the law also prohibits the following acts of the principal employer: (a) in addition to his assigned functions, requiring the contractual employees to perform functions which are currently being performed by the regular employees of the principal or of the contractor or subcontractor; (b) requiring him to sign, as precondition for employment, an antedated resignation letter, a blank payroll, a waiver of labor standards including minimum wages and social or welfare benefits, or a quitclaim releasing the principal, contractor or subcontractor from any liability as to payment of future claims; and (c) requiring him to sign a contract fixing the period of employment to a term shorter than the term of the contract between the principal and the contractor or subcontractor, unless the latter contract is divisible into phases for which substantially different skills are required and this is made known to the employee at the time of engagement.[98]

3.5 Workers' Protection and Main Problems of Inadequate Protection Concerning:

3.5.1 Conditions of Employment and Remuneration

Employees of contractors enjoy all the rights and privileges of regular employees.[99] They are in fact considered regular employees of the contractors.

The contractor is under legal obligation to comply with the various labor standards and protective provisions of law. The principal is duty bound to ensure that his contractors or subcontractors comply with all the requirements of law.

Employees of contractors by law also enjoys security of tenure. Like regular employees, they cannot be dismissed except for causes specified by law. Security of tenure for employees of contractors however appears illusory than real.

A principal can at any time demand the replacement of an employee or employees of a contractor. Because of fear of losing the commercial contract, the contractor or subcontractor has no option but to oblige. He then places such employee or employees in the work pool while awaiting future assignment. While in the work pool, such employee or employees do not enjoy remuneration or allowance for their sustenance. This is in line with the decision of the Supreme Court on "a fair day's wage for a fair day's work".[100] Without sustenance, it is just a matter of time when such employee or employees of the contractor will be seeking job else where.

[97] See Sec. 7, Department Order No. 10.
[98] Ibid.
[99] See Sec. 11, ibid.
[100] See Caltex Refinery Employees Association (CREA) v. Brillantes, 279 SCRA 218.

3.5.2 Conditions of Occupational Safety and Health

On matters of occupational hazards in the work place, since employees of the contractor or subcontractor work within the premises of the principal employer, they also need protection against such hazards. Such work sites are subjects of inspections by the Department of Labor and Employment.

In recent years however, several workers in the construction industry in the Philippines died when the place they are working on collapsed. In the first week of August 1999 for instance in the City of Cebu, seven construction workers died when the building they were constructing collapsed as a consequence of heavy rains.

The law requires the contractor or subcontractor to provide their workers with safety gadgets necessary in the performance of their jobs.

3.5.3 Social Security

Employees under a triangular or trilateral relations also enjoy social security. Under Philippine laws, the contractor or subcontractor has the obligation to enroll their employees with the Social Security System. In fact the law requires the principal employer to insure that his contractor or subcontractor complies with the requirement of law. The principal employer by operations of law may be held jointly and severally liable with the contractor or subcontractor for the failure of the latter to enroll such employees with the system.

3.5.4 Freedom of Association

Employees of the contractor or subcontractor also enjoy freedom of association. They may join or form unions for the purpose of collective bargaining or for any other legal purposes. They however cannot join the union of the regular employees of the principal employer.

As already discussed above, the right to association for the purpose of collective bargaining in the Philippines is intimately related to the existence of employer-employee relationship. Since the principal employer and the employees of the contractors or subcontractors do not have employer-employee relationship, the latter are forbidden from joining the union of regular employees of the former.

3.5.6 Collective Bargaining

Employees of contractor or subcontractor also enjoy the right to collective bargaining. They may bargain collectively with the contractor or subcontractor. They are not allowed however to bargain collectively with the principal employer for the same reason that there is no employer-employee relationship between the two.

Also, employees of contractor or subcontractor may stage concerted action against their direct employer. They are prohibited however from staging a strike in the premises of the principal employer again because of the absence of employer-employee relationship. Where such strike occurs in the premises of the principal employer, such strike will be perceived not as a labor dispute but coercion, which is a

criminal offense. Such striking employees of the contractor or subcontractor may therefore be brought by the principal employer before the regular courts both for criminal and civil liabilities.

3.5.7 Access to Labor Justice

Employees of contractor or subcontractor also have access to labor justice. They may file a case against their direct employer, the contractor or subcontractor for violations of labor standards and other laws before the compulsory arbitration branch of the government. In addition and to insure their protection, the principal employer may be held jointly and severally liable with the contractor for any violation of labor standard, including minimum wage, to the extent of the work performed under the contract, in the same manner and extent that the principal is liable to its direct employees.[101]

The principal employer is also jointly and severally liable with his contractor for claims of the latter workers in the following instance: (a) when the certificate of registration, license or business permit of the contractor or subcontractor is cancelled, revoked or not renewed by the competent authority; or (b0 when the contract between the principal and the contractor or subcontractor is pre-terminated for reasons not attributable to the fault of the contractor or subcontractor.

Moreover, there are instances when the law declares the principal employer as the employer of the contractors' employees and the latter agent of the former. These are: (a) when the contractor or subcontractor is not enrolled with the Department of Labor and Employment; (b) when the contractor or subcontractor is found committing any of the prohibited activities enumerated above; (c) when the contractor or subcontractor is declared guilty of unfair labor practice as specified in Section 8 of the Rules[102]; and (d) when violations of the relevant provisions of the Code has been established by the Regional Director in the exercise of his enforcement powers.[103]

3.6 Positive Solution to Inadequate Protection

As discussed above, the Philippine laws provide adequate protection to employees of contractor or subcontractor. The problem however is in the observance of the laws.

Inadequate protection for employees of contractor or subcontractor is directly related to the precarious character of their tenure. As argued above, the security of tenure provided for by law for employees of contractor or subcontractor is more illusory than real. They may lose their jobs at any time by the principal employer demanding that the employees of the contractor assigned to it (the principal employer) be replaced.

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[101] See Sec. 13, ibid.
[102] Sec. 8 of Department Order No. 10 provides that "contracting out of a job, work or service being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization shall be unlawful and shall constitute unfair labor practice."
[103] See Sec. 14, ibid.

The uncertainty surrounding their tenure somehow deters the employees of the contractor or subcontractor from insisting on their rights. The fear of being placed in a work pool status without any remuneration is in fact equivalent to dismissal without just cause. Worst they cannot even complain against the contractor or subcontractor for dismissing them illegally as they are technically not dismissed but only placed in a work pool status.

The situation is clearly shown by Tables 4 and 5. The statistics show that majority of the enterprises inspected were found violating labor standard laws. Yet Table 5 shows that few workers file their complaint despite such massive and open violations by their employers.

The key solution to this problem appears to be in the exercise of the freedom of association. In the Philippines, the moment the employer decides to contract out a job or services, the employees that will be affected lose their employment status. Because they are no longer employees of the principal employer, they also lose their membership in the union of regular employees of the principal.

The definition of right to association may have to be expanded. Workers who are affected by the contracting out of job should be allowed to continue their membership with the regular employees of the principal employer. In fact, the right to association should be extended not only to those regular employees who become employers of the contractor or subcontractor but also to regular employees of the contractor or subcontractor. In other words, the definition of right to association should be such that employees of contractor or subcontractor should be allowed to join the union of regular employees of the principal employer.

IV Self-Employment

Self-employment is a contentious concept. Based on figure 1, they may be part of level 2 or 3. For instance, contractors and subcontractors in level 2 are classified as self-employed. Home workers, contractual employees, provisional and other types of workers in level 3 also form part of the so-called self-employed.

4.1 Concept

The concept of self-employment in the Philippines follows the internationally accepted concept. Self-employed are persons who organized their own activity and supply products or services to a varied clientele, according to their own criteria and for a price or a fixed fee that is generally determined by the market or by a tariff, under contract law.[104] They are the craftsmen, farmers, professionals, etc., who are not dependent on any particular employer. In some instances self-employed may be also an employer. As a rule, their relationship with their respective clientele is not governed by labor laws but by the law on obligations and contracts.

[104] This is also the ILO definition of self-employment.

4.2 Mode of Self-employment

In the Philippines, the concept of self-employment could be broadly classified into two: (a) those who are directly dependent on the market and therefore have no apparent employer; and (b) those who offer their services to an employer.

Those who are directly dependent on the market and therefore have no apparent employer could be further divided into two types. These are: (1) those who own large establishments who are also classified as employers; and (2) those who are engaged in small or medium buy-and-sell businesses. The latter includes craftsmen, farmers and fishermen. They are players in the informal sector or underground economy.

On the other side, those who offer their services to an employer could also be broadly classified into two types. They are: (a) those who are not in a situation of economic or other dependency with other persons; and (b) those who are in a situation of economic or other dependency.

Those who are not in a situation of economic or other dependency to another person is also called professional or independent contractor. The Supreme Court ruled that independent contractors are "those who exercise independent employment, contracting to do a piece of work according to their own methods without being subject to control of their employer except as to the result of their work."[105] His remuneration is agreed upon between the employer and the self-employed. The characteristics of self-employed who is not in a situation of economic or other dependency with another person are: (a) he exercises independent employment; (b) he is contracted to do a piece of work according to their methods; (c) he is not subject to the control of the employer except as to the result; and (d) his compensation is based on what was agreed upon in a contract.

4.3 Trends

4.3.1 Quantitative Evolution

Available data suggest an increasing number of employers and self-employed. Table 3 shows that the average number of employers increased, although insignificantly, by 13 from 1,004 to 1,017 for the years 1997 and 1998, respectively. The average number of self-employed also increased by 102 from 9,347 to 9,450 for the years 1997 and 1998, respectively. The average number of own-account workers - combined employer and self-employed - increased by 115 from 10,352 to 10,467 for the period 1997 and 1998, respectively.

The more alarming increases however concern the number of contractors engaged by establishments. Table 6 shows a progressive increase from 897 to 1,110, then 1,190 and finally 2,202 for the years covering 1994, 1995, 1996 and 1997, respectively. For the period 1996 to 1997, the survey shows an increase of the number of contractors by 85.0 percent.

[105] Naguiat v. National Labor Relations Commission, 269 SCRA 564.

4.3.2 Qualitative Evolution

The quality of self-employment is also improving. As a consequence of globalization, many workers who used to be in the formal sector had been pushed to the informal sector. Most had began opening up small scale buy-and-sell business. Others workers such as the meter readers of the Manila Electric Company (MERALCO) and linemen of the Philippine Long Distance Telephone Company (PLDT), began contracting out jobs from their former employer.

The improvement in quality of self-employment is to a large degree intimately tied with the triangular or trilateral relationship discussed above. Because many enterprises in the Philippines have now begun contracting out jobs to independent contractors who are also self-employed, the type of self-employment also improved. From being confined only to incidental enterprise activities such as security, janitorial and maintenance service, self-employed persons are now engaged in activities directly related to the production process of business enterprises. Any increase in the number of jobs contracted out by enterprises (Table 6) will correspondingly be translated as opportunities for self-employed persons. Any increase in the number of subcontractors engaged by enterprise means opportunities for self-employed.

4.4 The Law and Jurisprudence on Self-employment

As discussed above, self-employment in the Philippines is generally perceived as a commercial transaction between the clientele and the self-employed. It is generally governed not by labor laws but by the Civil Code.

The legal bases for self-employment or the right to engage in productive activities and earn a living are found in the Philippine Constitution. The Declaration of Principles and State Policies provides that the "state shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life."[106]

The Constitution further provides that "the State recognizes the indispensable role of the private enterprise, encourages private enterprise, and provides incentives to needed investment."[107]

These principles are reiterated in the latter part of the Constitution when it declares that in pursuit of the goals of industrialization and economic development, "all sectors of the economy and all regions of the country shall be given optimum opportunity to develop and that private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership."[108] Thus private initiative or self-employment has been recognized by the State as playing an indispensable role in nation building.

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[106] See Sec. 9, Art. II, Declaration of Principles and State Policies, 1987 Philippine Constitution.
[107] See Sec. 20, Art. II, Declaration of State Principles and Policies, Philippine Constitution.
[108] See Sec. 1, Art. XII, National Economy and Patrimony, Philippine Constitution.

The clearest Constitutional support for self-employment is found in the section on National Economy and Patrimony. The Constitution declares "the sustained development of a reservoir of national talents consisting of Filipino scientists, entrepreneurs, professionals, managers, high-level technical manpower and skilled workers and craftsman in all field shall be promoted by the state."[109] Even on the aspect of promoting social justice the Constitution declares that "it shall include the commitment to create economic opportunities based on freedom of initiatives and self-reliance."[110]

Jurisprudence in the Philippines on self-employment on the other hand is closely linked with the concept of regular employment. In the determination of what constitutes regular employment, the Supreme Court had consistently applied the so-called "control test". Thus said the Supreme Court, four (4) elements are usually considered in determining the existence of an employment relationship, namely: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control of the employees conduct, the most important element is the employer's control of the employees conduct, not only as to the result of the work to be done but also as to the means and methods to accomplish the same.[111] Absence any of the said elements, then there is no employer-employee relationship. It could be a case of self-employment.

4.5 Rights and Obligations of Self-employed

The rights of self-employed persons are also found in the Philippine Constitution. The right of self-employed to exist and to engage in business or undertaking is protected by the Philippine Constitution. The Philippine Constitution provides that no person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the law.[112] As ruled by the Supreme Court, "one's employment, profession, or trade or calling is a 'property right', and the wrongful interference therewith is an actionable wrong."[113] The legislature may not, under the guise of protecting the public interest, arbitrarily interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations."[114]

The contract entered into by the self-employed and his clientele is also protected by the Constitution. The Constitution prohibits the legislature from passing a law that will impair the obligation of contract.[115] Thus said the Supreme Court, "a law which changes the terms of a legal contract between parties, either in the time or mode of performance, or imposes new conditions, or dispense with those expressed or authorizes for its satisfaction something different from that provided in its terms, is a law which impairs the obligation of contract and is null and void."[116]

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[109] See Sec. 14, ibid.
[110] See Sec. 2, Art. XIII, Social Justice and Human Rights, Philippine Constitution.
[111] See Maraguinot and Enero v. National Labor Relations Commission, G.R. No. 120969, January 22, 1998.
[112] See. Sec. 1, Art. III, Bill of Rights, 1987 Philippine Constitution.
[113] See Crespo v. Provincial Board, 160 SCRA 66 (1988).
[114] United States v. Toribio, 15 Phil. 85.
[115] See Sec. 10, Art. III, Bill of Rights.
[116] Clemens v. Nolting, 42 Phil. 702 (1922).

Unlike the right to life however, the right to contract, may be altered by the valid use of the state of police power to protect labor. Thus, ruled the Supreme Court, "the obligation of contracts yields to a valid exercise of police power for the improvement of the welfare of labor."[117]

The Civil Code of the Philippines spells out the rights and obligations of self-employed. The law defines an obligation as "a juridical necessity to give, to do or not to do".[118] Obligation has four (4) elements, namely, (a) an active subject who has the power to demand the prestation[119] known as the obligee or creditor, (b) a passive subject who is bound to perform the prestation, known as the obligor or debtor, (c) an object of prestation, and (d) the efficient cause or the juridical tie between the two (2) subjects by reasons of which the debtor is bound in favor of the creditor to perform the prestation.[120]

Obligations may be created by (a) law, (b) contract, (c) quasi-contract, (d) acts or omission punished by law, and (e) quasi-delicts.[121] Obligations concluded by self-employed with his clientele are generally created by contract. A contract may be written or oral. A contract giving rise to an obligation has the force of law between the contracting parties and should be complied with in good faith.[122] Said the Supreme Court, "a valid contract, that is a contract that does not violate any law, should be given effect, notwithstanding the absence of any legal provision at the time it was entered into which governs it."[123]

The self-employed has the right to demand compliance with the contract. This right could be enforced through the regular courts. In addition, he may also claim for damages from a person who, for any reason, deliberately refused to perform his prestation.[124] The kind of damages he may be awarded are actual, compensatory, exemplary and moral damages.

4.6 Protection of Workers and Main Problem Concerning Lack of Adequate Protection

4.6.1 Conditions of Employment and Remuneration

Self-employed persons are generally exploited not by a particular person but by the vagaries of the market. In an economic situation where competition has been heightened all self-employed persons, be the employers, small scale vendors, farmers, fishermen, craftsmen, professionals, contractors and subcontractors, etc., need some

[117] See Abella v. National Labor Relations Commission, 152 SCRA 140 (1987).
[118] See Art. 1156, Civil Code of the Philippines.
[119] The legal obligation to deliver, to do or not to do is called prestation.
[120] Tolentino, A. (1997) Commentaries and Jurisprudence on the Civil Code of the Philippines, Central Lawbook Publishing Co., Inc., Quezon City, Philippines, p.56.
[121] Art. 1157, Civil Code of the Philippines.
[122] Art. 1159, ibid.
[123] See for example Quizana v. Redugerio, 50 Official Gazette 2444, June 1954; Castro v. C.A.; 99SCRA 722; Escano v. C.A., 100 SCRA 197.
[124] See Art. 1170, Civil Code.

kind of protection. In what form such protective measure should come will largely depend on the type of self-employed.

Heightened competition has forced the Filipino entrepreneur to utilize a more flexible labor force. As shown by figure 1, the trend is for corporation to engage a relatively small number of regular employees and a large number of flexible employees working under flexible arrangements in order for it to survive. But the effectiveness of such strategy is limited.

The Filipino entrepreneur must make his operations more efficient in order to become more competitive to weather the consequences of globalization. They too are in need of protection. And protection given to them will go a long way as it will mean the preservation and generation of more employment.

The key appears to be in the use of technology. Filipino entrepreneurs must improve their technology to become efficient. But technological development is expensive. Research and development of technology will entail a lot of expenses which, given the heightened competition, Filipino entrepreneurs are unable to address.

The government should therefore intervene strongly together with all concerned sectors especially the academe to assist our entrepreneur in forms of research and development for more efficient technology.

But the consequence of upgrading technology is in itself controversial. Researches show that the trend in technological development is the creation of two types of workers.[125] On one side, modern technology tends to create a few powerful, multi-skilled workers that controls the whole operation of a company. On the other side, it tends to de-skill a large number of workers.

Given this development, any technological improvement must also include skills upgrading to enable the workers to cope with the new technology. And, in this regard the government is in the best position to provide training programs that will up-grade the skills of the workers to prepare them for the introduction of modern technology.

As to the vendors, farmers, fishermen and professionals, they too are exploited by the vagaries of the market. They also need to up-grade their technology to make them more competitive and in turn assure their continued income in their respective fields of endeavor or operation. Their skills should also be up-graded to enable them to respond to the introduction of new technology in their fields.

In respect of craftsmen, contractors and subcontractors, the recent development in the field of employer-employee relationship as discussed above suggests favorable climate for their continued operations. Similarly they too must up-grade both their technology and skill to be come more competitive and in turn insure their continued income.

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[125] See for example Wood, S. (ed.) (1985) **The Degradation of Work?**, London, Hutchinson; Smith, C. (1989) "Flexible Specialization, Automation and Mass Production", **Work, Employment and Society**, vol. 3, pp. 203-220; Dey, I. (1989) "Flexible Parts' and 'Rigid Fulls': The Limited Revolution on Work Time Patterns," **Work, Employment and Society,** vol.. 3, pp. 465-490.

4.6.2 Occupational Safety and Health Conditions

Self-employed persons are essentially responsible for their personal and that of their workers' safety and health. Often, self-employed are more focused on the safety and health of their workers than that of their own.

On the personal safety and health of the self-employed, education and research will be a good protective strategy. The self-employed should be trained to value occupational safety and health not only for themselves but also for their employees. On the aspect of research, self-employed, given the stiff competition, are unable to address this concern. The government should develop a system of research and dissemination of research output.

On the safety and health of the workforce of the self-employed, the problem lies on the self-employed's ability to comply with the requirements of law. The government program along this line should be proactive in the sense that it is aimed in enabling the self-employed to comply with the law rather than being punitive where the self-employed are punished for their failure to comply.

4.6.3 Social Security

Under Philippine laws, self-employed may enroll themselves with the country's Social Security System. The only requirement is that they will have to shoulder both the employer and employee contributions to the fund.

The problem along this area lies in the lack of information as to the need to enroll and the benefits that could be derived as a member of the system. Protective measures along this line should include information dissemination and education.

4.6.4 Freedom of Association

By law, the self-employed also enjoys the right to form or join association. In fact in the Philippines, there exist a substantial number of Filipino entrepreneurs' organizations, namely: (a) Employers Confederation of the Philippines; (b) Philippine Chamber of Commerce and Industry; (c) Makati Business Club; (d) Filipino-Chinese Chamber of Commerce and Industry; and (e) Filipino-American Chamber of Commerce and Industry.

There are also substantial number of organizations of farmers and fishermen. These organizations operate mainly as cooperatives and are intended to allow them to avail of the benefits under the law on cooperatives.

There are also a substantial number of professional organizations in the Philippines. Some of these organizations are: (a) Integrated Bar of the Philippines for lawyer; (b) Philippine Medical Association for doctors of medicine; (c) Philippine Nurses Association for nurses; (d) Philippine Dental Society for dentists; (d) Philippine Civil Engineers Society for engineers; and (e) Personnel Managers of the Philippines. Also contractors and subcontractors in the Philippines have recently organized themselves to pursue and promote the interest of their respective businesses.

There are however a very small number of organizations of craft workers in the Philippines. The reason could be attributed to the provisions of the Labor Code on workers organization. Trade unions in the Philippines are organized along general unions similar to that of the United States of America. Although some unions like those of the stevedores in the various ports of the country, and in some companies like transport workers of San Miguel Corporation, continue to exist as craft unions.

4.6.6 Collective Bargaining

As discussed above, the concept of collective bargaining in the Philippines is intimately tied with the concept of employer-employee relationship. Since the self-employed do not have a particular employer, they also cannot exercise the right of collective bargaining.

As a protective measure for the self-employed, the concept of collective bargaining as practiced in the country today should be expanded. The self-employed should be allowed to bargain collectively. For instance, market vendors association should be allowed to negotiate with any supplier for a favorable price of their products. The protective provisions of law on collective agreement should also include situations of this nature.

4.6.7 Access to Labor Justice

Self-employed under the law has access to labor justice. As discussed above they may file a case before the regular courts to enforce their rights. They are also entitled to damages in case of refusal of the other party to comply with the latter's prestations.

There are generally four (4) types of damages that a self-employed may be entitled to incase of failure of the other party to comply with the latter's prestation, namely: (a) actual damages; (b) compensatory damages; (c) exemplary damages; and (d) moral damages.[126] Actual damages are the estimated amount of damage that the said self-employed suffered as a consequences of the failure to comply with the prestation. Compensatory damages are the amount that he should have earned such for example as interest had the other party complied with his prestation. Exemplary damages are the amount estimated by the court as necessary to set an example so that such non-compliance with the prestation shall not be repeated. And moral damages are the amount fixed by the court to compensate the self-employed for the moral and emotional suffering as a consequence of non-compliance with the prestation.

[126] See Tolentino, A. (1997) **Commentaries and Jurisprudence on the Civil Code of the Philippines**, Central Lawbook Publishing Co., Inc., Quezon City, Philippine, p.115; Castro v. Acro Taxicab Co., 46 Official Gazette 2023.

V Self-employment in Situation of Economic or Other Dependency

The other type of self-employment is one in a situation of economic or other dependency as regards another person. In figure 1, this is shown in level 3.

5.1 Characteristics of these Types of Workers

The characteristics of these types of workers are as follows: (a) the nature of their employment is generally problematic. It may be perceived either as commercial or regular employment; (b) they are hired directly by the employer for a period not exceeding six (6) months[127]; (c) they are flexible employees as they are forced to move from one employer to another; and (d) they are in a situation of economic or other dependency as regards another person to whom they offer their services.

5.2 Denomination

Self-employment in a situation of economic and other dependency in the Philippines could be broadly divided into two (2) types, namely: (a) open self-employment in a situation of economic dependency; and (b) hidden self-employment in a situation of economic dependency.

5.2.1 Open self-employment in a Situation of Economic Dependency

Open employment is a situation of economic dependency where the workers are required to perform their jobs in the situs of work of their employers. These are:

Part-time employment – refers to workers who render work for a period less than the normal eight-hour working day or those who work less than the normal six working days in a week. This type of worker often maintains more than one employer to earn more.

Commission-paid employment – refers to those who are paid depending on the income they brought in for their employer. They earn a percentage of the income they derived for their employer.

Casual Employment – are those who are hired for a particular period or season. They may be hired as temporary replacements of on-leave regular employees or are hired during peak seasons when more workers are needed.

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[127] An employee who is made to work for more than six (6) months becomes a regular employee by operations of law. As such he may not be dismissed except for cause. The Labor Code of the Philippines provides:

Art. 281. *Probationary employment* – Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

Contractual Employment – are those who are hired at any time but for a definite period not exceeding six (6) months. This type of employment is the most commonly used by the employers in the Philippines today in an effort to achieve more flexible work force as a key factor for survival in the situation of heightened competition.

5.2.2 Hidden Self-employment in a Situation of Economic Dependency

Hidden self-employment in a situation of economic dependency involves workers who are not required to work in the situs of employment of the employer. They are:

Home workers – are those who do their jobs in places other than the place of work of their employer. The normal arrangement is that the employer supplies the materials and machinery; then worker processes the same and the employer pays him based on the number of pieces completed.

Boundary workers – are workers in the transport industries who are required to set aside part of their earnings as rental to the owner of the vehicle they are flying. Under this arrangement, driver, in addition to the boundary, also pays for the gasoline. The owner of the vehicle continuous to be the franchise holder of the vehicle. While the Courts in the Philippines look with disfavor on boundary system, nonetheless, it is most widely practiced in the Philippine transport system today.

There are other types of hidden self-employment in a situation of economic dependency. They are in fact too numerous to mention in this research. Such for example as street vendors, car watch boys, prostitutes, etc. are simply difficult to account given the short period of time to complete this paper.

5.3 Trends

5.3.1 Quantitative Evolution

5.3.1.i Open Self-employment in a Situation of Economic Dependency

Table 11 shows the quantitative evolution of open self-employed in a situation of economic dependency in the Philippines. While they constitute a small portion of the workforce, their number is growing. Part-time workers grow by 12,000 from 51,000 in 1996 to 63,000 in 1997. Commission-paid workers grow by 51,000 from 119,000 to 170,000 for the period 1996 and 1997, respectively. Casual workers grow by 26,000 from 108,000 to 134,000 for the period from 1996 and 1997, respectively. The highest growth was registered by contractual workers at 81,000 from 320,000 in 1996 to 401,000 in 1997.

Table 12 shows the percentage increase of open self-employment in a situation of economic dependency. Part-time work increased by 0.2% from 2.0% to 2.2% for the years 1996 and 1997, respectively. Commission-paid workers increased by 1.3% from 4.6% to 5.9% for the years 1996 and 1997, respectively. Casual workers

increased by 0.6% from 4.1% to 4.7% for the period 1996 and 1997, respectively. And contractual employees increased by 1.7% from 12.3% to 14.0% for the years 1996 and 1997, respectively.

5.3.1.ii Hidden Self-employment in a Situation of Economic Dependency

Quantitative estimates of the extent of hidden self-employment in a situation of economic dependency in the Philippines are scanty. While this practice is common in particular industries such as embroidery or work involved in finishing touches in the manufacture of garments even from the beginning of the century, researches on the subject only began in the late 1980 when, as a consequence of globalization, many companies began experimenting on a more flexible labor system.

In a study conducted in 1993, Mangahas was able to identify some indications as to the extent of hidden self-employment in a situation of economic dependency in the Philippines. [128] But her study was confined mainly to home-workers. There is no available data as to the workers under a boundary system in the transport industry.

Drawing from the result of a 1989 Social Weather Stations household-based survey, she estimated that about 2.2 million or 12.3 percent of self-employed and private enterprise workers are engaged in subcontracting.[129] Seen in terms of the overall working population, including government workers, at that time, subcontracting involves about 10.9 percent of the workforce. Involvement in subcontracting appears to have a stable proportion to all income classes, that is at 13–14 percent. It is moderate high for males at 14.7 percent compared to females at 10.1 percent; high for those between ages 18-24 at 15.9 percent; and more significant in Metro-Manila at 18.5 percent, urban Visayas at 16.3 percent and urban and rural Mindanao at 18.0 and 25.0 percents respectively.

The study of Mangahas also suggests that of the estimated 2.2 million engaged in subcontracting activities, about half work in firms or factories; a fourth work at home; and another fourth work in varied places like the streets or farms. The 587,000 home-based workers represents only about 7.5 percent of those engaged in subcontracting and about 3 percent of the total working population.

The more recent study however conducted by the Bureau of Labor and Employment suggests a more rapid growth in the utilization of homeworkers by the company. Table 6 shows that the establishment engaged in subcontracting to homeworkers grow by 236 or 57.8 percent from 408 to 644 for the years 1996 and 1997 respectively. The growth of the number of establishment contracting out job to individual persons is even more significant. It grew by more than 100 percent from a mere 28 in 1996 to 378 in 1997.

[128] Mangahas, Alcestis A. (1993) , "Profile of Homeworkers in the Philippines: New National Survey," in Lucita Lazo (ed.) **From the Shadows to the Fore, Practical Actions for the Social Protection of Homeworkers in the Philippines**, ILO-ROAP, Bangkok, Thailand, pp. 60-106.

[129] Mangahas defines subcontracting as the production of goods which are either used as raw material for other goods and services or are relabelled and resold by buyers.

5.3.2 Qualitative Evolution

5.3.2.i Open Self-employment in a Situation of Economic Dependency

The qualitative evolution of open self-employment in a situation of economic dependency has been noted. Similar to workers in triangular or trilateral employment relations and self-employment, the workers in this category are no longer confined to performing incidental activities such as janitorial, security and maintenance work. As suggested in Table 6, they are now employed in areas which were formerly the exclusive domain of regular workers. These are the production processes, marketing, packaging, transport and clerical or encoding.

5.3.2.ii Hidden Self-employment in a Situation of Economic Dependency

Available data on qualitative evolution of hidden self-employment in a situation of economic dependency are also to be noted. While traditionally, this type of employment is confined mainly to garments and transport, Mangahas suggests that many industries have in fact began utilizing the services in this category for work directly related to the operation of a company or in activities necessary to the principal business of an employer.

5.4 Main Cause for this Kind of Work

The rising number of non-regular employment or the contracting out of jobs could be attributed to the need for a more flexible labor force to cope with the heightened competition brought about by globalization.

In a 1990 Philippine Labor Flexibility Survey,[130] the reasons given by the employers for employing contract labor are: (a) the need for specialized skills (23.2 percent); (b) shortage of such skills (12.8 percent); (c) fluctuating demand/business condition (22.9 percent); and (d) low costs (18 percent). Low cost is attributable to the following: (a) lower supervision costs (6.7 percent); (b) lower training cost (3.9 percent); (c) lower pay (2.8 percent); (d) fewer paid holidays (2.2 percent) and (e) lower/fewer benefits (2.2 percent). The wage variable appears insignificant. This contradicts the widely accepted belief that saving on wages is the driving force for contracting out work. These reasons were valid then as they are now.

The reasons for not resorting to contracting, on the other hand, includes: (a) the desire of employers to keep a stable workforce; and (b) the nature of the production/service itself, meaning it is not desirable for some aspects of production to be contracted out.

The survey also suggests that labor law had virtually no influence on the decisions of employers (98.7 percent) to contract out work.

[130] Institute for Labor Studies (1994) **Statistics from the Philippine Labor Flexibility Survey, 1990**, Department of Labor and Employment, Manila, Philippines.

5.5 Main Activities Currently Carried out by Self-employed Workers in a Situation of Economic Dependency

As already suggested above, the main activities now being performed by self-employed had improved. From the traditional area of transport under the boundary system and finishing touches in the garment industry, other industries have begun availing of the services of self-employed workers.

Not only has the quality of work of the self-employed. It has also expanded. From essentially incidental activities such as janitorial, security guard and maintenance, they are now utilized directly in the production process.

Table 6 shows the type of jobs subcontracted by establishment engaged in subcontracted. These jobs are: (a) production process; (b) marketing; (c) packaging; (d) transport; and (e) clerical/encoding.

Moreover, Table 6 suggests the increasing number of establishment subcontracting out parts of their production process more particularly for the period 1996 and 1997. Thus employers who had contracted out production process increased 34.0 percent from 853 to 1,147 for the years 1996 and 1997 respectively. Those who contracted out marketing increased by more than a 100% from 31 to 103; packaging by 57.7 percent from 52 to 82; transport by 78.9 percent from 76 to 130; and others (undefined forms) by more than 100% from 178 to 611 for the years 1996 and 1997 respectively.

5.6 Problem of Classification

Currently, data and statistics on these kinds of workers are limited. Although atypical employment arrangements are prevalent, the law does not provide clear-cut boundaries in classifying workers involved in the arrangements.

For open self-employment in situation of economic dependency, the Bureau of Labor and Employment Statistics has identified specific groups. But this is not the case for hidden self-employment in situation of economic dependency. The difficulty in classifying workers in this sector lies in the fact that it is situated in the underground economy. For one thing, these types are too numerous to enumerate as there exist a very broad range of activities.

There are also problems with the fluidity of the type of work contracted out by establishments. Open self-employed workers in a situation of economic dependency are no longer confined to performing incidental activities such as janitorial, security and maintenance work. They are now employed even in the production process, marketing, packaging, transport and clerical or encoding. On the other hand, hidden self-employment in a situation of economic dependency are not only confined to garment and transport but also to production processes.

The form of employment has also become very fluid. Workers in situation of dependency shift employment from one classification to another. There is even mobility within one category (within open and hidden) and from one category to another.

5.7 Workers Protection and the Main Problem of Lack of Adequate Protection

5.7.1 Conditions of Employment and Remuneration

5.7.1.i Open Self-employment

Because workers in open self-employment in situation of economic dependency perform their task at the premises of the employer, they also enjoy minimum terms and conditions of employment provided for by law. Labor inspection covers them. However, as shown in table 4 the number of establishments inspected and found with violations of labor laws is very high. And yet table 5 suggests a rather low number of workers filing cases for such violations. Workers in this category are often wary of filing initiating complaint for several reasons, namely, (a) they do not enjoy security of tenure as they are hired for a very short duration of not more than six (6) months; (b) in a situation of high unemployment, violations of labor standards are often sacrificed; and (c) often the workers hope that their employment may eventually be extended or renewed and therefore they avoid offending their employers by reporting labor standard violations.

5.7.1.ii Hidden Self-employment

For hidden self-employment in situation of economic dependency, the situation is worse. Because the employer is in charge of providing the workers with raw materials, they can be dismissed at any time by simply not delivering any material for them to work on.

The workers are often paid by result but again the number of pieces given to them to work on is dependent on the employer. Thus their income is highly dependent on the wishes of their employer.

Moreover, the rate per piece or job is fixed by the employer. And since the workers are considered independent contractors, they are free to accept or reject the rates fixed by the employer. But again because of the high unemployment, here the workers are often left with no choice but to accept the rates.

5.7.2 Occupational Safety and Health

While open self-employment in situation of economic dependency is supposed to be subjected to the same regulations as those applicable to regular employment, in actual practice, the regulations are not observed in the arrangement. Like hidden self-employed workers, their occupational safety and health situation is deplorable. They often are not provided with the proper protective gears because as independent contractors, they are expected to be responsible for the acquisition of such protective gears.

In the 1995 NSO-ILO survey on informal workers, some insights on these working conditions may be cited.[131]

Among the major complaints on work conditions are noise, body pain, physical exhaustion, and dust. Other problems were lack of workspace, poor work tools, excessive heat, and lack of ventilation. The survey also indicated that 93% of the operators do not use protective equipment.

5.7.3 Social Security

The Philippine Social Security System allows all self-employed not more than 60 years of age with a monthly income of at least Phil. P1,000.00 to enroll with the system. Under the law, such self-employed must pay both his share and that of his employer.

The number of self-employed enrolled with the SSS however remains low. And there are several reasons for this. First, since the income of the self-employed is low, unstable, and seasonal, contributions on a regular basis, normally monthly, creates difficulties for them. Often the assessment is beyond their means. More so because they have to shoulder a higher rate of contribution than regular employees as they must pay as well the employers' contribution. Second, the offices of the SSS that accept remittances of contributions are often located in urban areas. It would entail time and money for self-employed to go to the SSS for their monthly remittances. Both these items, namely time and money, are a luxury that the self-employed do not have an abundance of. Lastly and more important, the self-employed could not simply see the importance of social security. Perhaps an intensive information campaign is needed for the self-employed to realize the relevance of Social Security in their daily life.

5.7.4 Freedom of Association

5.7.4.i Open Self-employed in a Situation of Economic Dependency

Under the law, an employee, whether employed for a definite period or not, shall, beginning the first day of service, be considered an employee for purposes of membership in any labor union.[132] The application of this provision, however, to self-employed is problematic.

First, as already stated above there is this question of whether the relationship between the employer and the self-employed is a commercial transaction or an employment relation. Under Department Order No. 9 (Series of 1997), because of the absence of employer-employee relationship, the self-employed may organize only for mutual aid and protection and not for the purpose of collective bargaining.

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[131] Joshi, Gopal. Urban Informal Sector in Metro Manila: Problem of Solution? ILO-SEAPAT, Manila. 1997.

[132] Art. 277, par. © provides:

Art. 277. Miscellaneous provisions. –

© Any employee, whether employed for a definite period or not, shall, beginning on his first day of service, be considered an employee for the purpose of membership in any labor union.

And secondly, granting that they may qualify as employee, still, because of the short duration of their stay with their employer, often the self-employed simply refuse to join unions. There are of course compelling reasons for this. These are: (a) they do not have security of tenure and joining a union may in fact cost them their jobs; (b) they are not welcome by members of the regular employees because they are commonly perceived as competitors for scarce available jobs; (c) because their tenure is relatively short, i.e. not exceeding six months, most self-employed can just hope of either being extended or rehired or their contracts renewed. To join the union may adversely change the achieving their dreams; and (d) union dues and other assessment are simply beyond their means of self-employed in a situation of economic dependency.

5.7.4.ii Hidden Self-employed in a Situation of Economic Dependency

The situation of hidden self-employment in a situation of economic dependency in the Philippines is quite interesting. The self-employed in the transport industry under boundary arrangements are highly organized. In urban places such as Metro-Manila, Cebu, etc. they are organized along the craft union system. In rural areas, they are organized along the concept of cooperatives for their mutual aid and protection.

Other self-employed in this category are not as cohesive. They in fact remain unorganized. The reason that could be advanced for this situation are two-old. First, because they are hidden, they have no access to trade unions. And second and more important, because of their low, irregular and seasonal income, they cannot afford to pay regular monthly dues or other assessment normally shouldered by members of an organization.

5.7.5 Collective Bargaining

As previously discussed, the practice of collective bargaining in the Philippines is narrow. It is intimately tied with the existence of employer-employee relationship. As a consequence, the self-employed do not often exercise the right to bargain collectively. On a limited scale, if they enter into a collective agreement at all, the agreement partakes of a different nature.

Any agreement entered into by the self-employed is civil in character. This distinction is important. Collective bargaining according to the Supreme Court is imbued with public interest and therefore it must be registered with the Department of Labor and Employment in order for the principle of contract bar to apply. Under the law, no other agreement could be validly enforced in the enterprise during the life-time of a registered collective agreement. This is not so when it comes to civil agreement.

5.7.6 Access to Labor Justice

The self-employed in a situation of economic dependency can apply for redress from either the regular court or the compulsory arbitration system. The jurisdiction or authority to hear of a compulsory arbitrator is confined to a situation

where an employer-employee relation exists or had existed between the complainant and respondent. The normal defense when it comes to self-employed person is precisely the lack of employer-employee relationship. In such a situation, the compulsory arbitrator has no chance but to dismiss the case. This does not mean that the self-employed no longer have any place to go. He may in fact go to the regular courts.

As explained above, the exercise by the self-employed of his rights by filing a case against an employer is more illusory than real. First, the fear of dismissal often overcomes the desire to seek redress for wrongs committed against him. And second, the expenses involved specially if the case will have to be filed in the regular courts, such as filing fees and payment for lawyers are a luxury that a self-employed could hardly afford.

VI Case Studies

6.1 Worker in the Transport Industry

Jonathan Cabieres, aged 31 years old, has worked in the transport industry all his adult life. He first started working as a tricycle[133] driver, later on becoming a company driver, bus driver and funeral parlor driver. But his longest experience has been working as a taxi or cab driver for different taxi operators[134] in Metro-Manila. He has been driving professionally now for nine years, albeit, he acquired his driver's license illegally through the *lagay*[135] system.

Currently, a single unit operator employs him as a taxi driver in Project 7, Quezon City. He claims that he likes working for small time operators more as "they treat me as -- - - a brother." This big brother-small brother informal relationship is prevalent in small taxi operators as compared to big taxi companies. There are no elaborate application procedures. He was just asked to submit his previous employment record and National Bureau of Investigation (NBI) clearance and subjected him to an interview. They do not have a contract between him and his operator, the terms and conditions were discussed on a verbal basis.

Married with three children, Cabieres hardly earns enough for his family. Daily earnings from driving a cab vary, as there are many factors to be considered in determining his take-home pay. He lives a considerable distance from his operator so he has to spend more for fare to and from work. Sometimes traffic causes delay in his starting time. More often than not, his net earnings for a day's work amounts only to Phil. P250.00 (US$6.58),[136] a little more than the minimum wage of Phil. P195.00 in the National Capital Region. This amount is computed from his total earnings less

[133] Tricycle – three-wheel vehicle composed of a motorcycle and a side car used as a mode of short-range transportation in the Philippines.
[134] Operator – term used for taxi unit owners. At present, even owning a single unit qualifies for the operator tag.
[135] *Lagay* system – system wherein individual gets his papers approved not on the basis of his qualifications, but because somebody else has vouched for, influenced or bought the approval.
[136] Computed based on the prevailing rate of US$1.00 to Phil. P38.00

gasoline and *boundary*.[137] For his present employer, his current *boundary* is Phil. P550.00 (US$14.47), lesser than the standard Phil. P750.00 (US$ 19.74) charged by big-time taxi operators. If he is unable to drive he earns nothing.

Although his *boundary* is lower, there is a big difference in terms of numbers of hours he can drive the cab. As compared to big-time taxi company procedures, wherein a taxi driver can opt to work for 24 hours straight three time a week, Cabieres works five days a week on a semi-straight[138] basis. His *karelyebo*[139] just got dismissed.

On days when his taxi unit is out of commission due to engine problems or whenever his unit is covered by the *color-coding scheme*[140] of the Metro-Manila Development Authority, he drives other cabs for a day as an *extra*[141] basis. However, in his desire to earn more, he occasionally gets into trouble, as he does not exactly know the history of those vehicles. Sometimes, he unknowingly drives *colorum*[142] taxis or units with *batingting*[143] or those with broken or missing seals. He takes risks in running affront of the law as would certainly happen of he is chanced upon by a flying squad[144].

He is not a member of the Social Security System nor he enjoys the benefit of accident insurance. The operator does not shoulder hospitalization and medical examinations. He complains:

"It's not a joke being a taxi driver. When I go home and rest I feel my back and headache. I don't have the benefit of a tinted windshield and window. (My) arms are *tapang-tapa*[145] from the sun's ray."

He also complains that although he has control over his working hours, the pressure to earn more often leads to self-abuse. According to Cabieres:

"At times, I abuse myself from not eating because I can still see a lot of potential passengers. Other times, I refrain from taking a leak even I feel that I really have to go…."

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[137] *Boundary* – the term used for the fixed amount a taxi driver pays the operator as rental each time he drives the taxi unit.
[138] As compared to a 24 hour straight working session, semi-straight means from 12 to 14 hour working session.
[139] *Karelyebo* – the term use for alternate or substitute driver.
[140] *Color coding scheme* – the term commonly used to refer to the Vehicular Reduction Program of the Metro-Manila Development Authority wherein a vehicle is not allowed to fly the street of Metro-Manila once every Monday to Friday based on the plate number ending.
[141] *Extra* – the term commonly used for sideline work or work done outside of the regular work to earn extra money.
[142] *Colorum* – vehicles without permit to operate as public transportation.
[143] *Batingting* – A tampering device which enables the meter to go faster than the existing standard rate of Phili. P1.00 for every 200 meters traveled from a flag down rate of Phil. P20.00, plus waiting time.
[144] Flying Squad – Officers of the Philippine Land Transportation Office charged with implementing the laws on public utilities.
[145] *Tapang-tapa* – derived from the root word "tapa" marinated sun-dried meat normally eaten for breakfast.

Major occupational hazards include accidents. Even if he is the aggrieved party, he has to pay the operator for the damages to the taxi unit. Then there are the run-ins with corrupt police officials commonly called *buwayas.*[146] "While driving I see a lot of them ask the drivers to pull over for questioning even if no traffic violation is committed," he complains. In situations like this, he prefers to give grease money, the amount of which will be deducted from his earnings.

His familiarity with trade unions tends to be limited as he views them as "those that conduct strikes." He has not yet experienced collective action first hand. He remembers an incident where Tamaraw FX[147] drivers conducted a protest activity wherein drivers barricaded and blocked certain portion of a main thoroughfare and "they got a lot of negative comments as a consequence of the exercise."

6.2 Contractual Cashier in a Large Department Store

Pamela Simon, a 24 year old working mother, is currently employed as contractual cashier for five months with Shoe Mart (SM), Cubao. Shoe Mart is the country's largest retail trade outfit. At present, it operates large Malls in Cubao, North Edsa, Ortigas, Fairview, Las Pinas all in Metro-Manila, in Bacoor, Cavite, and in Cebu down South

According to a report by the Center for Women's Resources, in the six SM largest Department Stores and Head Office, 85% percent of the estimated 10,000 workers are women. Only 1,1571 are regular employees and only 1,100 are covered by a collective agreement. Also, majority of the regular workers has been employed for less than 10-15 years.

Simon had previously been employed as contractual employee in SM Supermarket, Cubao and in SM North Edsa. The policy at the moment is that separated contractual employees must wait for at least a year before their re-application will be accepted. She heard of the job opening through a friend who is also employed as a contractual worker by SM. They were hired directly by SM, and not through a contractor or placement agency.

Working in either 9:45 a.m. to 6:45 p.m. or 11:30 a.m. to 8:30 p.m. shift, she earns gross pay of Phil. P218.00 (US$5.74) a day. The standard working time in the department store is eight (8) hours however they are asked to report for nine (9) hours to cover the one (1) hour lunch break. In SM both contractual and regular employees enjoy a day off after six consecutive days of work.

Additional pay at the rate of Phil. P32 an hour is paid for both regular and contractual for each hour of work in excess of the regular work time. Their overtime pay is automatically reflected on their pay slips given every 5th and 20th of the month through Banco de Oro Automatic Teller Machine, a bank also owned by the owner of Shoe Mart (SM).

[146] *Buwayas* – literally means crocodile with its insatiable appetite.
[147] Air conditioned shuttle vehicles produced by Toyota which used to be 10-seater taxis, but are now illegally plying specific routes and charging passengers individually, like buses or jeeps.

Upon each hiring, an employee is required to sign a contract and then to attend a one-week seminar with full pay. Contractual employees however do not enjoy benefits such as sick leave or vacation leave as they are only hired for five (5) months. They are however enrolled with the Social Security System and they also enjoy coverage from the MediCare.

There is a perception that SM prefers hiring single females over married ones. According to Simon:

". . . in my case, I'm married so definitely, I won't get regular employment. They base it (regular employment) on that (civil status)."

She continues:

"Working mothers or married women are discriminated against because employers do not want to hire us. It is for the simple reason that working mothers are more prone to absences because when their children get sick, they decide to stay home to take care of them."

As a cashier, Simon had experienced getting short of cash during turnover. In such instance, the amount of shortage is automatically deducted from her pay. However, in a situation where the amount of cash exceeds the tally, the management appropriates the excess amount. Cashiers also get an allowance of Phil. P120.00 to cover shortages, a benefit enjoyed by both regular and contractual cashiers.

But Simon may be considered luckier than other regular employees. According to Rene,[148] a regular SM employee, the trend today is towards the employment of "promo girls"[149] from consignors who are paid by business units who have outlets at the department store. "Promo girls" are admonished not to talk or engage in conversation with regular employees and are prohibited to join a union.

Another technical used by SM to weaken or avoid unions is the preference for hiring of Iglesia ni Kristo[150] over other religious denomination. Iglesia ni Kristo members are prohibited by their religion from joining unions. According to Rene, there was a time last year where almost all the batches regularized were Iglesia ni Kristo members.

Recruitment is also based on youth and physical appearance. Only 18-24 years old applicants with a height of at least 5 feet 2 inches for women and 5 feet 7 inches for men are entertained. Good grooming and stylish dressing are plus factors during interviews. A written examination on the history of SM based on the lecture of the recruiting manager is conducted. A lecture on GST[151] is given. Women applicants who manage to hurdle examinations are then asked to report wearing skirts, not pants. They are asked to walk stylishly. Preference is given to good-looking and clear-complexioned applicant.

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[148] Name has been altered to protect the worker.
[149] Commonly referred to as merchandizers. They are employers of the producers of goods they are promoting.
[150] Religious denomination in the Philippines.
[151] Greet, Smile and always say Thank you.

Before the signing of the employment contract, a fee is collected for ID lamination and uniform. Employees can bring in personal accessories; however, they should be registered with the security guard. Before they time-in, the security guard inspects each employee for any unregistered and prohibited items. During the eight-hour shift, whenever personal needs arise such as going to the comfort room, the security guard re-inspects the employee and is given a limited time for the break. Otherwise, the security guard will go inside the comfort room to check on the said employee.

6.3 Worker in a Construction Industry

Irene Bernardo is employed as Human Research Development Assistant C-5 project of F.F. Cruz Co. F. F. Cruz Co. was established in 1965 and it is the countries largest construction company with nationwide operations. It is engaged in both private and public work projects. One of its current projects is the C-5 highway Package 1, covering the Ortigas Ave. Extension Fly-over in Metro-Manila's busiest thoroughfares.

The C-5 Package 1 Project started in August 1998. The original schedule for the completion of the project was set on July 31, 1999. However, the Company asked for a six-month extension to repair the drainage in the surrounding area.

For such project the company currently employs 77 workers, 22 of which are office-based personnel, 47 operation staff construction workers (laborers, welders, carpenters, masons), and 5 heavy equipment division personnel. The Department of Public Work and Highway (DPWH) provides additional 18 personnel.

There are two (2) types of workers in the company, namely, the regular and project employees. Engineer and foremen (office based) are regular employees. They earn Phil. P10,000.00 (US$ 263.16) or more each month. Other regular rank-and-file operation staff are daily wage earners, receiving a minimum wage of Phil. P198.00 (US$5.21) a day.

Project employees on the other hand are hired on per contract basis. They are required to sign a stipulation in their respective contracts that states that they are hired "until the accomplishment of the project."

All the employees of the company are enrolled with the Social Security System. Other than the Social Security System, they do not have any other insurance.

The regular work time of the company is from 7:00 a.m. to 4:00 p.m. from Monday to Saturday. Generally Sunday is the workers rest day. Employees enjoy a one (1) hour lunch break at 12:00 noon and thirty (30) minutes break each in the morning and in the afternoon.

Sometimes, operations in the construction site extend to as much as 24 hours a day. During the time of interview with Bernardo, workers were asked to report from 7:00 a.m. to 6:00 p.m. because of backlog scheduled. In such situation workers are given overtime pay computed in accordance with law. An employee who is paid the

minimum wage could earn as much as Phil. P30.00 (US$0.79) each hour. This means that they could earn Phil.P250.00 (US$6.59) per day with overtime.

According to Bernardo, personnel are hired directly by F. F. Cruz Co., for its projects. The company avails of databanks where previous workers are registered. Others are walk-in applicants who check out the office everyday for available work.

Workers who worked in previous projects are the ones who are working in the C-5 project. Although one of the minimum requirements is a high school diploma, experience is also highly valued. Technical and vocational school graduates were also hired based on qualifications.

Requirements such as bio-data, medical certificates and previous employment records are part of the application process. Trade tests are then conducted although applicants are not compensated while undergoing the test. Further training such as seminar in handling machinery is conducted only among regular employees.

Usually, project employees are able to complete their employment contracts. Once personnel are needed for a new project, project heads could ask for some workers that are presently employed in other existing on-going projects of the company. In cases like this, a worker's contract with the project may be terminated, but he will be rehired in another project as per project head request without change in remuneration.

Workers are provided with occupational safety gears such as hard hats, gloves, boots and other safety gears. The company imposes strict safety rules such that an employee who time-in with an incomplete safety gears will not be allowed to work. These safety gears are issued at the beginning of each project and it is the responsibility of the employee to maintain and up-keep the same.

Every week, workers have a tool box meeting, wherein they are briefed on safety regulations and reminded of important safety tips. A safety engineer regularly visits the site and all the work places to check if the safety standards are being followed.

For every project, the main office allots a certain amount from the petty cash fund for hospitalization or accident expenses. When injuries happen, services of a nurse are available in the work site. For first aid, the nurse may borrow money from this fund, which is reimbursable later on.

There is a specific budget for medicine. Common ailments such as common colds, headaches, and muscular pain are provided with medicines. According to Bernardo, the company could even pay for all the expenses for an accident "as long as it is not too much." When the cost is "too high", the company coordinates with other agencies or employs other methods. One of this, for example, is when a co-worker causes an accident; the expenses to cover the injury of a worker will be deducted from the salary of the co-worker who has caused the accident.

Regular employees are allowed to join a union and bargain collectively with the company. Project based employees are allowed to join associations but they may not demand that the company will bargain collectively with such association.

The C-5 Project started out with a high of 200 workers. Now, since the project is almost completed, the company separated more than half of the work force as their respective contracts have already expired. These dismissed workers were endorsed for employment in other projects. They were not paid separation pay however as their tenure is co-terminus with the project. In a situation where a worker is not absorbed in another project, he will be placed under the status of forced leave without pay until another project comes where he will be hired.

6.4 Workers in the Garment and Textile Industry

Lana de Jesus, a 26 years old, is a piece-rate worker of a garment company that is a subcontractor of a larger firm with direct contract of supply with an American firm. Her company manufactures garments for export to America and Europe. Its operation is confined to a two-room apartment and the company does not even have a business name, as it is not registered with any government agency.

During the interview, there were about 25 all-women task-rate workers or *mamamakyaw*.[152] De Jesus earnings depend on the number of piece completed and accepted by her employer. The piece rate workers gets sixty (60) per cent of the profit while her direct employer, the contractor or subcontractor, gets forty (40) per cent. Her employer shoulders the cost of thread, electricity, and machinery although these are passed on as expenses before profit.

De Jesus handles the sewing of buttons to the straps of baby dresses she was working on. The products are sewn in parts, with the operation divided into about eight to ten parts. Each worker sews a different part – the zipper, label, sleeves, collar, buttons, edging.[153] They are done simultaneously. Some workers had to perform double tasks because some of the machines were out of order.

Operations for a single contract usually last for 7 weeks. During good times, operations last whole year round and the workers continuously earn a living. According to de Jesus, last year there was an incident when the work stopped for a week because there were no orders. During such period, de Jesus and her co-workers also had no income.

She has been working with her current employer for almost three (3) months. Previously, she was employed with other small-scale employer with similar operations and under the same terms and conditions. All in all, she has been employed in the garments industry for ten (10) years.

In between her employment, she helps her family in their small farm, planting and harvesting rice during seasons.

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[152] *Mamamakyaw* – is derived from the root word pakyaw or piece rater.
[153] Usually referred to as finishing touches.

For an eight hour day period, she usually finishes two bundles of assembled clothing, for which she is paid Phil. P0.45 for every pair of strap. She works from 8:00 a.m. to 5:00 p.m. There are days however where she extends her working time up to 8:00 p.m. to coup with the work on hand. For her efforts she earns Phil. P90.00 (US$2.37) a day. Payment is normally done at the end of a week. She has no regular workdays and to earn more she works seven days a week including Sundays. Although they can report to work at any time and go home whenever they want to, she rarely gets enough rest because of the pressure to earn more.

During hard times, de Jesus approaches the employer for a *vale*.[154] She describes her employer as *parang ka-pamilya*[155] because of the paternalistic and close-knit relationship between the workers and their employer. There are times when payment of their earnings get delayed and they have to make-do because they have no choice. The employer has limited capital and highly dependent on payments made by the contractor.

According to de Jesus, she did not sign any contract with her employer. She was referred to the employer by other co-workers who live in the same area where she resides. Some workers live inside the work area[156] and their board and lodging are deducted from their income.

In a situation where their work is rejected, while still in the work place, the worker may repair the item or article in question and without pay. If rejected outside the work place, then another worker is assigned to repair the same item or article.

De Jesus and her co-workers are not enrolled in the Social Security System. Taxes are not also withheld from their income.

VII Conclusion

Providing adequate protection to various forms of employment relations in an economic situation characterized by stiff competition where the very survival of the employers is at stake is a difficult task. The task requires a delicate balance between the survival of industries and adequate protection to workers and that would mean additional cost for industries.

Such a delicate balancing act was clearly manifested in the 1998 case of the Philippine Air Lines (PAL). This case sent a chilling message to all the major actors of industrial relations, namely, government, employers and workers.

The Philippine Airlines (PAL) is the largest air transportation company in the country. It closed operations on September 18, 1998.[157] Its closure may be attributed to several reasons. First, stiff competition for air passengers. Second, error in corporate judgment when it decided early-on to embark on re-fleeting in anticipation

[154] Cash advance or loan.
[155] Part of the family.
[156] Commonly referred to as live-in.
[157] "PAL to shut down operations September 23", **Philippine Daily Inquirer**, 18 September 1998.

of more air passenger as a result of globalization and to mop-up excess employees.[158] Third, PAL had to contend with multiple unions.[159] And lastly and equally important, PAL had to operate in a very adversarial industrial relation atmosphere.

Its problem was compounded by the 1997 Asian financial and economic crisis that caused the shrinking of the number of air passengers. It was further aggravated a crippling three-week strike from June 5 to 25, 1999 by its pilots. It was only because of the prodding of the government, coupled with an assurance of assistance, that the PAL reopened. To date, it still remains uncertain whether it could continue its operations despite efforts of the government and the owner to keep PAL flying.

An important lesson that could be drawn from the PAL case is that an adversarial industrial relations has no place in an economic situation where industries have to face stiff competition from foreign companies.

The integration of Philippine domestic economy to the global economy has exposed it to international pressures unprecedented in its history. While the adverse impact of the 1997 Asian financial and economic crisis was not as sudden and dramatic as compared to Thailand, South Korea and Indonesia, the Philippines felt the full brunt of the crisis in the middle of 1998 or a year after it broke out.[160]

Despite the gradual build-up of the economy, the crisis had serious dislocating effect on both home and export industries. This is clearly reflected in the statistics on layoffs and unemployment.[161] The total number of registered layoffs in 1998 reached 155,198 involving around 3,072 industrial and commercial establishments, or more than twice those of 1997 (62,724 workers in 1,155 establishments).[162] This figure is understated as many companies do not bother to report the dismissal of casual, contractual and other self-employed in a situation of economic dependency and small enterprises do not ever bother to go to government office to report layoffs. The overall unemployment went up to 10.1 percent in 1998, meaning a total of 504,000 persons were added to the ranks of the unemployed bringing the total unemployed persons to 3.144 million in 1998.[163]

Available statistics also suggest a discordant note. The number of employers inspected and found violating labor standards on one hand is high and still increasing (table 4). On the other hand, the number of complaints for violations of labor standards filed by the workers (table 5) decreased. These facts clearly reinforced our position that any effort to provide adequate protection to the workers under a

[158] PAL prior to the June 1998 pilot strike has 13,000 employees for only 54 planes and a combined total of 64 international and domestic daily flights.
[159] PAL has three existing unions, namely, Air Line Pilots Association of the Philippines (ALPAP), Flight Attendance and Stewards Association of the Philippines (FASAP) and Philippine Air Lines Employees Association.
[160] Ofreneo, R. and B. Macaraya (1998) "The Asian Economic Crisis: Impact on Philippine Labour Relations," **Issues and Letters**, Philippine Center for Policy Studies, vol. 7, no. 4, July-August 1998.
[161] See for example Ofreneo, R. (1999) **The Asian Economic Crisis and the PAL Labor Troubles**, a paper prepared for the 4th ASEAN Inter-University Seminar on Social Development, held at CS Thani Hotel, Pattani, Thailand, 16-18 June, 1999.
[162] Ibid.
[163] Ibid.

globalized economy must be holistic to be meaningful. It must address both the concerns of the employers and the workers.

7.1 Some policy recommendations

The proposal to link free trade with social clauses[164] now subject of debates has become more relevant in discussing how to provide adequate protection to workers in an economic regime where trade has been liberalized. The proposal is to deny access to a market for goods produced in violation of any of the standards prescribed by the social clauses. This proposal however must be carefully studied. The main bone of contention is who should determine whether a violation was committed or not. If determination is left to the host country alone the general perception is that such proposal is a new form of trade protectionism and therefore it violates the General Agreement on Tariff and Trade (GATT). The more prudent approach is to create an international arbitration body under the International Labor Organization that has the power to determine whether such industry committed a violation of the social clauses or not. Only after such determination should a product of an industry found violating such international standard be denied access to a market.

Efforts must be made towards the development of more cooperative industrial relations. This will help in making industries more competitive and therefore sustainable and stable in a globalized economy. A sustainable and stable industry is a requisite for any meaningful protection to workers.

The government should help industries by exerting efforts towards technological development to make them more competitive. Such technological development however, should be appropriate, in a sense that it will not result to machine replacing workers.

The government should also invest on skill up-grading to help both industries and labor. For industries, the government should help produce appropriate skills given the present state of technology used. For workers, possession of multiple skills is an advantage in a flexible labor system.

Strengthening of employers organizational capability to provide cooperation and mutual reinforcement among its members to cushion the impact of competition coming from foreign sources.

The concept of regular employment should be expanded to include other types of employment relations. This is necessary in order to allow a more meaningful participation of unions in providing adequate protection to labor.

The concept of freedom of association in the Philippines should be re-examined. Workers in other types of employment relations such as contractual,

[164] Social clauses refer to the seven core Conventions of the International Labour Organization that collectively may be considered an international labor standards. These core Conventions are: a) abolition of forced labor; b) freedom of association; c) right to collective bargaining; d) protection to minor workers; e) protection to women workers; f) non-discrimination in work place; and g) minimum wage fixing.

casual, and other types of workers should be allowed to join the unions of regular employees.

The concept of collective bargaining should likewise be examined. An agreement between a group of workers should be considered a collective agreement. For instance, an agreement between an association of street vendors for a discounted price from a supplier should be allowed to register as collective agreement despite the absence of employer-employee relationship. This will extend legal protection to such an agreement.

Trade unions should also be reorganized along craft lines to enable them to access workers of other forms of employment relationship. This will dramatically expand their organizational base from solely regular employees to all kinds of workers regardless of employment relations.

Finally, as discussed above, the trend today is that the types of jobs now being subcontracted are increasing. As a result, the various forms of employment relations are also increasing. Each type of employment relations needs a particular form of protection to labor. Further research is suggested to determine the types of jobs being contracted out, the types of employment relations and the mode of effectively providing adequate protection to workers given their peculiar work situations.

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Appendices

Table 1 Household Population 15 Years Old and Over and Employment Status

Philippines: 1997 – January 1999 (In thousands except rates)

INDICATOR	1997					1998					1999
	Ave	Jan	Apr	July	Oct	Ave	Jan	Apr	July	Oct	Jan
Household Population 15 Years Old and Over	45,770	45,327	45,621	45,918	46,214	46,963	46,512	46,812	47,114	47,415	47,719
Labor Force	30,354	29,631	31,368	30,154	30,265	31,055	30,236	32,113	30,593	31,278	31,168
Employed	27,715	27,335	28,105	27,531	27,888	27,911	27,691	27,837	27,856	28,262	28,368
Working:											
Less than 40 hours (part-time)	9,171	9,288	9,497	8,377	9,522	9,712	9,689	9,655	9,419	10,085	9,899
40 hours and over (full-time)	18,169	17,709	17,975	18,899	18,093	17,708	17,580	17,344	18,132	17,776	18,032
Underemployed	6,121	5,755	6,577	6,348	5,805	6,081	5,984	5,837	5,803	6,701	6,269
Visibly	3,031	3,006	3,321	2,866	2,932	3,306	3,289	3,330	3,036	3,567	3,433
Invisibly	3,090	2,750	3,256	3,482	2,873	2,776	2,695	2,507	2,767	3,134	2,835
Unemployed	2,640	2,296	3,263	2,623	2,377	3,144	2,545	4,278	2,737	3,016	2,800
Labor Force Participation Rate (%)	66.3	65.4	68.8	65.7	65.5	66.1	65.0	68.6	64.9	66.0	65.32
Employment Rate (%)	91.3	92.3	89.6	91.3	92.1	90.0	91.6	86.7	91.1	90.4	91.02
Underemployment Rate (%)	22.1	21.1	23.4	23.1	20.8	21.8	21.6	21.0	20.8	23.7	22.10
Visible Underemployment Rate (%)	10.9	11.0	11.8	10.4	10.5	11.8	11.9	12.0	10.9	12.6	12.10
Unemployment Rate (%)	8.7	7.7	10.4	8.7	7.9	10.1	8.4	13.3	8.9	9.6	8.98

***Notes**: 1. Details may not add up to respective totals due to rounding.*

2. Based on past week reference period.

3. Averages and rates are computed based on rounder figures.

Definitions:

Labor Force – population 15 years old and over who contribute to the production of goods and services in the country and either employed or unemployed.

Employed – persons in the labor force who were reported either at work or with a job or business although not at work during the reference week.

Unemployed – persons in the labor force who did not work or had no job/business during the reference week and were reportedly looking for work.

Underemployed – employed persons who expressed the desire to have additional hours of work in their present job or in an additional job or to have a new hob with longer working hours.

Visibly underemployed – employed persons who worked less than 40 hours a week and wanted additional hours of work.

Invisibly Underemployed – employed persons who worked 40 hours or more a week and still wanted additional hours of work.

***Source:** Bureau of Labor and Employment Statistics, DOLE.*

Table 2 Household Population 15 Years Old and Over and Employment Status by Sex

PHILIPPINES, 1997 – JANUARY 1999

(In thousands except rates)

INDICATOR	1997					1998					1999
	Ave	Jan	Apr	July	Oct	Ave	Jan	Apr	July	Oct	Jan
MALE											
Household Population 15 Years Old and Over	22,744	22,570	22,781	22,744	22,879	23,292	23,078	23,224	23,324	23,540	23,753
Labor Force	18,997	18,652	19,632	18,855	18,848	19,409	18,990	19,973	19,161	19,510	19,534
Employed	17,466	17,286	17,815	17,327	17,437	17,533	17,443	17,538	17,500	17,653	17,773
Working:											
Less than 40 hours (part-time)	5,353	5,511	5,587	4,799	5,514	5,821	5,828	5,860	5,572	6,025	5,920
40 hours and over (full-time)	11,918	11,571	11,956	12,377	11,770	11,442	11,355	11,277	11,748	11,389	11,573
Underemployed	4,199	3,975	4,521	4,322	3,979	4,216	4,142	4,022	4,052	4,646	4,437
Visibly	1,898	1,919	2,073	1,766	1,835	2,162	2,131	2,190	1,989	2,337	2,319
Invisibly	2,301	2,056	2,448	2,556	2,144	2,054	2,011	1,832	2,063	2,309	2,118
Unemployed	1,530	1,366	1,817	1,528	1,411	1,875	1,547	2,435	1,661	1,857	1,761
Labor Force Participation Rate (%)	83.5	82.6	86.2	82.9	82.4	83.4	82.3	86.0	82.2	82.9	82.2
Employment Rate (%)	91.9	92.7	90.7	91.9	92.5	90.4	91.9	87.8	91.3	90.5	91.0
Underemployment Rate (%)	24.0	23.0	25.4	24.9	22.8	24.0	23.7	22.9	23.2	26.3	25.0
Visible Underemployment Rate (%)	10.9	11.1	11.6	10.2	10.5	12.3	12.2	12.5	11.4	13.2	13.0
Unemployment Rate (%)	8.1	7.3	9.3	8.1	7.5	9.7	8.1	12.2	8.7	9.5	9.0
FEMALE											
Household Population 15 Years Old and Over	23,026	22,756	22,840	23,174	23,335	23,672	23,434	23,588	23,790	23,876	23,966
Labor Force	11,358	10,979	11,736	11,299	11,417	11,646	11,247	12,142	11,431	11,767	11,635
Employed	10,248	10,049	10,289	10,204	10,451	10,378	10,249	10,299	10,356	10,608	10,596
Working:											
Less than 40 hours (part-time)	3,818	3,776	3,911	3,578	4,008	3,892	3,863	3,796	3,847	4,060	3,980

40 hours and over (full-time)	6,250	6,137	3,020	6,521	6,323	6,266	6,225	6,067	6,383	6,387	6,458
Underemployed	1,922	1,780	2,056	2,027	1,826	1,865	1,842	1,815	1,750	2,054	1,831
Visibly	1,133	1,086	1,248	1,101	1,097	1,143	1,158	1,140	1,046	1,229	1,114
Invisibly	789	694	808	926	729	722	684	675	704	825	717
Unemployed	1,110	930	1,447	1,095	966	1,269	998	1,843	1,075	1,159	1,039
Labor Force Participation Rate (%)	49.3	48.2	51.4	48.8	48.9	49.2	48.0	51.5	48.0	49.3	48.5
Employment Rate (%)	90.2	91.5	87.7	90.3	91.5	89.2	91.1	84.8	90.6	90.2	91.1
Underemployment Rate (%)	18.8	17.7	20.0	19.9	17.5	18.0	17.9	17.6	16.9	19.4	17.3
Visible Underemployment Rate (%)	11.1	10.8	12.1	10.8	10.5	11.0	11.3	11.1	10.1	11.6	10.5
Unemployment Rate (%)	9.8	8.5	12.3	9.7	8.5	10.9	8.9	15.2	9.4	9.8	8.9

Notes: 1. Details may not add up to respective totals due to rounding.
2. Based on past week reference period.
3. Averages and rates are computed based on rounded figures
Source: Bureau of Labor and Employment Statistics, DOLE.

Table 3 Employed Persons by Class of Worker

PHILIPPINES, 1997-JANUARY 1999

(In thousands)

CLASS OF WORKER	1997					1998					1999
	Ave.	Jan.	Apr.	July	Oct.	Ave.	Jan.	Apr.	July	Oct.	Jan.
ALL CLASS OF WORKERS	**27,715**	**27,335**	**28,105**	**27,531**	**27,888**	**27,911**	**27,691**	**27,837**	**27,856**	**28,262**	**28,368**
Wage and Salary Workers	13,461	12,975	13,386	13,917	13,565	13,678	13,452	13,761	13,641	13,858	13,888
Worked for:	11,323	10,847	11,240	11,789	11,416	11,492	11,293	11,594	11,447	11,636	11,695
Private Household	1,438	1,368	1,405	1,603	1,378	-	1,534	1,644	1,598	-	-
Private Establishment	9,696	9,319	9,613	10,004	9,847	-	9,582	9,745	9,672	-	-
Family Operated Activity	189	159	223	183	191	-	177	205	177	-	-
Worked for Gov't/Gov't Corporation	2,138	2,128	2,146	2,128	2,149	2,186	2,159	2,167	2,194	2,222	2,193
Own-Account Workers	10,352	10,327	10,416	10,016	10,647	10,467	10,465	10,349	10,445	10,613	10,607
Self-employed	9,348	9,447	9,326	8,946	9,672	9,450	9,593	9,501	9,568	9,139	9,256
Employer	1,004	880	1,090	1,070	975	1,017	872	845	878	1,474	1,351
Unpaid Family Workers	3,902	4,033	4,302	3,598	3,675	3,766	3,774	3,730	3,770	3,790	3,873

Notes: 1. Details may not add up to respective totals due to rounding.
2. Averages are computed based on rounded figures
3. Based on past week reference period.

Source of data: Bureau of Labor and Employment Statistics, Department of Labor and Employment.

Table 4 Establishments Inspected on General Labor and Technical Safety Standards

Philippines, 1997-March 1999

INDICATOR	1997	1998					1999			
		Total	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr	Total	Jan.	Feb.	Mar.
GENERAL LABOR STANDARDS										
Establishments Inspected	60,134	37,080	10,835	8,895	10,390	6,960	9,132	1,726	3,704	3,702
Establishments with violation	30,770	21,538	6,536	5,158	5,896	3,948	5,295	1,086	2,050	2,159
As percent of establishment inspected (%)	51.2	58.1	60.3	58.0	56.7	56.7	58.0	62.9	55.3	58.3
Percent of Establishments with violations on Minimum wage (%)	22.1	25.5	23.6	27.3	26.9	23.8	20.8	23.7	18.3	21.9
Establishments with Violations Corrected on	4,790	3,661	1,089	915	1,034	623	994	153	396	445
As percentage of Establishment with Violation (%)	15.6	17.0	16.7	17.7	17.5	15.8	18.8	14.1	19.3	20.6
Workers Benefited by Plant Corrections	56,881	46,767	14,167	8,256	14,827	9,517	11,703	1,734	5,583	4,386
Amount of Field Restitution (P000)	26,318	23,029	7,174	4,122	6,929	4,804	6,909	762	2,272	3,875
TECHNICAL SAFETY STANDARDS										
Establishments Visited	9,402	8,101	2,226	2,136	2,017	1,722	2,175	426	875	874
Units Inspected	17,908	15,126	4,668	3,852	3,415	3,191	4,750	1.049	1,929	1,772
Units of Violations	3,466	2,365	619	593	584	569	877	157	292	428
As percent of units inspected (%)	19.4	15.6	13.3	15.4	17.1	17.8	18.5	15.0	15.1	24.2
Units with Violations Corrected	1,229	1,235	198	310	319	408	517	71	162	284
As percent of units with violation (%)	35.5	52.2	32.2	52.3	54.6	71.7	59.0	45.2	55.5	66.4
Workers Benefited by Corrections	57,216	33,597	7,665	8,646	7,849	9,437	11,133	1,707	3,258	6,168

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Source of Data: Bureau of Labor and Employment Statistic, Department of Labor and Employment.

Table 5 Original and Appraled Labour Standard Cases

Philippines, 1997 – March 1999

INDICATOR	1997	1998					1999			
		Total	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr	Total	Jan.	Feb.	Mar.
ORIGINAL LABOR STANDARDS CASES (Regional Offices)										
Cases Pending, Beginning	3,795	3,892	3,892	3,683	4,189	4,479	3,120	3,120	2,971	3,192
Cases Newly Filed	17,596	12,303	3,832	3,357	3,262	1,852	2,833	768	1,039	1,026
Cases Handled	21,391	16.195	7,724	7,040	7,451	6,331	5.953	3,888	4,010	4,218
Cases Disposed	17,604	13,071	3,245	3,685	2,631	3,510	2,841	917	818	1,106
Disposition Rate (%)	82.3	80.7	42.0	52.3	35.3	55.4	47.7	23.6	20.4	26.2
Workers Benefited	156,295	109,514	23,251	26,502	29,867	29,894	28,678	7,089	11,551	10,038
Amount of Benefits (PM)	438.4	311.0	65.1	84.6	79.4	81.9	98.5	40.8	20.3	37.4
APPEALED LABOR STANDARD CASES (Office of the Secretary)										
Cases Pending, Beginning	109	74	C	C	C	C	-	-	-	-
Cases Newly Filed	99	106	C	C	C	C	-	-	-	-
Cases Handled	208	180	C	C	C	C	-	-	-	-
Cases Disposed	134	167	C	C	C	C	-	-	-	-
Disposition Rate (%)	64.4	92.8	C	C	C	C	-	-	-	-

1999 Preliminary
1998 data covers January – November only.
C No breakdown available
Source of data: Bureau of Labor and Employment Statistics, Department of Labor and Employment

Table 6 Summary Statistics on Establishments Engage in Subcontracting

1994-1997
(Based on Sample Data)

INDICATOR	YEAR				Percent Change 1996 – 1997
	1994	1995	1996	1997	
1. Total Sample Establishments	4,067	4,447	4,464	6,298	
- Engage in Subcontracting	361	336	391	547	40.0
- Percent share	5.0	7.5	8.9	8.7	
2. Number of Subcontractors Engaged	897	1,110	1,190	2,202	85.0
- Average per Establishment	2.5	3.3	3.0	4.0	
3. Type of Subcontractors					
- Company/Agency	419	568	754	1,180	56.0
- Individual with Homeworkers	458	530	408	644	57.8
- Individual Person	19	12	28	378	B
4. Type of Jobs Subcontracted					
- Production Process	672	830	853	1,147	34.0
- Marketing	15	31	31	103	B
- Packaging	33	27	52	82	57.7
- Transport	43	68	76	136	78.9
- Clerical/Encoding	A	A	A	123	-
- Others	133	154	178	611	B

*Excludes subcontracting for security/maintenance/ janitorial services.
A/ Indicator not included in the 1994, 1995 and 1996 surveys
B/ Over 100%
Source of Data: Bureau of Labor and Employment Statistics Department of Labor and Employment.

Table 7 Distribution of Establishments with Subcontractors by Major Industry Group

Philippines: 1997

(Based on Sample Data)

Major Industry Group	Total Respondent Establishments	Establishments with Subcontractor		
		Number	Percent	% to Total Respondent Establishments
ALL INDUSTRIES	6,298	547	100.00	8.69
Agricultural, Fishery and Forestry	327	15	2.74	4.59
Mining and Quarrying	61	11	2.01	18.03
Manufacturing	1,756	260	47.53	14.80
Electricity, Gas and Water	222	18	3.29	8.11
Construction	208	57	10.42	27.40
Wholesale and Retail Trade	902	61	11.15	6.76
Transportation, Storage and Communication	373	31	5.67	8.31
Financing, Insurance, Real Estate and Business Services	805	50	9.14	6.21
Community, Social and Personal Services	1,644	44	8.04	2.68

Source: Bureau of Labor and Employment Statistics, DOLE.

Table 8 Percent Share of Subcontractors Hired by Major Industry Group and Type of Jobs Contracted Out

Philippines: 1997

(Based on Sample Data)

Major Industry Group	Number of Subcontractors	Type of Jobs Contracted Out					
		Production /Services Process	Marketing	Packaging	Trans-portation	Clerical/ Encoding	Others
ALL INDUSTRIES	2202	52.09	4.68	3.72	6.18	5.59	27.75
Agricultural, Fishery and Forestry	30	70.00	-	-	-	-	30.00
Mining and Quarrying	52	46.15	-	-	26.92	-	26.92
Manufacturing	1089	70.89	5.60	5.79	5.33	2.94	9.46
Electricity, Gas and Water	212	8.02	-	-	1.42	0.94	89.62
Construction	251	69.32	-	1.20	1.20	-	28.29
Wholesale and Retail Trade	131	35.88	15.27	6.87	5.34	8.40	28.24
Transportation, Storage and Communication	179	15.08	3.91	2.79	18.99	11.73	47.49
Financing, Insurance, Real Estate and Business Services	159	21.38	1.89	-	8.18	26.42	42.14
Community, Social and Personal Services	99	31.31	12.12	2.02	4.04	15.15	35.35

Source: Bureau of Labor and Employment Statistics, DOLE.

Table 9 Distribution of Establishments with Subcontractors by Type of Market, Ownership and Employment Size

Philippines: 1997

(based on sample data)

Indicator	Total Respondent Establishments	Establishments with Subcontractor		
		Number	Percent	% to Total Respondent Establishments
TYPE OF MARKET	6,298	547	100.00	8.69
Export Oriented	934	214	39.12	22.91
Domestic Market	5,364	333	60.88	6.21
OWNERSHIP	6,298	547	100.00	8.69
With Foreign Equity	798	174	31.81	21.80
Without Foreign Equity	5500	373	68.19	6.78
EMPLOYMENT SIZE	6,298	547	100.00	8.69
10 – 19	926	20	3.66	2.16
20 – 99	2,139	133	24.31	6.22
100 and over	3,233	394	72.03	12.19

Source: Bureau of Labor and Employment Statistics, DOLE.

Table 10 Distribution of Subcontractors Hired by Type of Market, Employment Size and Ownership

Philippines: 1997

(based on sample data)

Indicator	Number Of Subcontractors	Type of Jobs Contracted Out					
		Production /Services Process	Marketing	Packaging	Trans-portation	Clerical/ Encoding	Others
TYPE OF MARKET	2202	1147	103	82	136	123	611
Export Oriented	1112	795	19	22	51	34	191
Domestic Market	1090	352	84	60	85	89	420
OWNERSHIP	2202	1147	103	82	136	123	611
With Foreign Equity	843	414	25	31	63	67	243
Without Foreign Equity	1359	733	78	51	73	56	368
EMPLOYMENT SIZE	2202	1147	103	82	136	123	611
10 – 19	42	14	3	0	4	1	20
20 – 99	370	196	16	17	31	12	98
100 and over	1790	937	84	65	101	110	493

Source: Bureau of Labor and Employment Statistics, DOLE.

Table 11 Employment of Specific Groups of Workers by Year

Philippines: 1991 – 1997
(in thousands)

INDICATOR	1991	1992	1993	1994	1995	1996	1997
TOTAL EMPLOYMENT	**2,292**	**2,504**	**2,561**	**2,493**	**2,692**	**2606**	**2,865**
Female Employment	892	1,018	1,010	933	1,028	973	1,077
Youth (Aged 15 –24) Employment	293	427	348	342	358	297	385
Minimum Wage Earners	499	545	461	648	705	640	794
Time-rated Workers	2,136	2,347	2,376	2,289	2,553	2,465	2,691
Piece-rated Workers	97	91	95	91	90	69	89
Task or "Pakyao" Workers	17	35	35	28	43	32	40
Part-time Workers	34	37	46	37	48	51	63
Commission-paid Workers	163	90	129	135	143	119	170
Casual Workers	95	102	87	108	119	108	134
Contractual Workers	161	250	250	197	319	320	401

Source of data: Bureau of Labor and Employment Statistics, DOLE

Table 12 Employment of Specific Groups of Workers by Year

Philippines: 1991 – 1997
(in percent)

INDICATOR	1991	1992	1993	1994	1995	1996	1997
Female Employment	38.9	40.4	39.4	37.4	38.2	37.3	37.6
Youth (aged 15 – 24) Employment	12.8	17.1	13.6	13.7	13.3	11.4	13.4
Minimum Wage Earners	21.8	17.1	18.0	26.0	26.2	24.6	27.7
Time-rated Workers	93.2	93.7	92.8	91.8	94.8	94.6	93.9
Piece-rated Workers	4.2	3.6	3.7	3.7	3.3	2.6	3.1
Task or "Pakyao" Workers	0.7	1.4	1.4	1.1	1.6	1.2	1.4
Part-time Workers	1.5	1.5	1.8	1.5	1.8	2.0	2.2
Commission-paid Workers	7.1	3.6	5.0	5.4	5.3	4.6	5.9
Casual Workers	4.1	4.1	3.4	4.3	4.4	4.1	4.7
Contractual Workers	7.0	10.0	9.8	7.9	11.8	12.3	14.0

Source of data: Bureau of Labor and Employment Statistics, DOLE