

LABOR PROCEDURE

These notes are lifted from my book *Bar Syllabus-Based Reviewer in Labor Law and Social Legislation*, which my publisher and I mutually agreed to retire from print publication. They now form part of the contents of this tutorial program.

JURISDICTION AND RELIEF

Mandatory Conciliation-Mediation (SENA)

Labor Arbiter

National Labor Relations Commission

Judicial Review of Labor Rulings

Bureau of Labor Relations

National Conciliation and Mediation Board

POEA

DOLE Regional Directors

DOLE Secretary

Grievance Machinery

Voluntary Arbitrator

Prescription of Actions

Money Claims

Illegal Dismissal

Unfair Labor Practice

Offenses under the Labor Code

Illegal Recruitment

**WITH UPDATES BASED ON THE 2025 NLRC RULES
OF PROCEDURE**

(Effectivity: 13 January 2026)

NOTES
(Updates in Blue)

LABOR PROCEDURE¹

Overview

Labor procedure is the means by which the power to hear and resolve labor disputes is conferred, acquired, and exercised resulting in a disposition or judgment, as well as the means by which said outcome may be challenged.

All references to the “2011 NLRC Rules of Procedure, as amended” are deemed replaced with: “**2025 NLRC Rules of Procedure** (NLRC En Banc Resolution No. 09-25; approved 01 December 2025; effective 13 January 2026).”

SEnA Proceedings

UPDATE (2024 Jurisprudence): The Supreme Court reaffirmed that SEnA is a mandatory statutory gateway to adjudication. Quitclaims and compromise agreements executed in the SEnA context are subject to strict judicial scrutiny, particularly as to voluntariness and adequacy of

¹ This is a reproduction of 80 pages of my *Survival Notes in Labor Law*, 2020 ed.

consideration (Naldo, Jr. v. Corporate Protection Services Phils., Inc., G.R. No. 243139, 03 April 2024).

NLRC En Banc Resolution No. 08-17, Series of 2017, the filing of a Single Entry Approach (SEnA) Request for Assistance interrupts the running of the prescriptive period for filing a labor complaint.

The Resolution categorically recognizes that SEnA is a mandatory pre-litigation mechanism and that a worker cannot be faulted for complying with it. Thus, once a Request for Assistance is timely filed within the prescriptive period, prescription is tolled, and the action does not become time-barred merely because the formal complaint is filed after the original prescriptive period has elapsed, provided it is filed after the termination of SEnA.

Twin-Jurisdictional Rules

1. Reasonable Causal Connection Rule

Labor jurisdiction is determined by employer-employee relationship (**SMC v. Etcuban**, G.R. No. 127639, 3 December 1999; **Sonza v. ABS-CBN**, G.R. No. 138051, 10 June 2004; Bar 2015, Question No. XXI; Bar 2015, Question No. XXII). It requires that the matter brought to a labor tribunal or agency must have reasonable causal connection to EER, *i.e.*, it arose from it.

1.1. Exceptions

1.1.1. **DOLE Advisory 4, s. 2016** (even independent contractor talents are allowed to file complaints with the DOLE- RD).

1.1.2. **Sec. 7, R.A 10022**. Deployment of OFWs make them employees. If undeployed, they are not. Regardless, undeployed OFWs can file money claims with the LA.

1.1.3. **Art. 219 (e), Labor Code.** There can be a labor dispute “regardless of whether the disputants stand in the proximate relation of employer and employee” as in

- (a) Inter-union disputes
- (b) Intra-union disputes

These disputes do not arise from EER. Regardless, the disputants are heard by the RD or BLR.

1.1.4. **Art. 260, Labor Code.** ULPs of labor organizations v. workers and union membership. EER is not an element of these ULPs. But they are for the LA or VA to hear and resolve because they generate labor disputes “regardless of whether the disputants stand in the proximate relation of employer and employee.”

1.1.5. **Medical Repatriation.** A medically repatriated seafarer is no longer an employee. If he dies outside the period of his employment contract, his dependents can litigate before the Labor Arbiter to claim death compensation.

1.2. **Post- Employment Claims**

1.2.1. **Portillo v. Lietz**, G.R. No. 196539, 10 Oct. 2012. A claim for liquidated damages arising from breach of a Non-Compete Clause (NCC) is a post-employment claim; hence, an employer cannot interpose it as a counterclaim in a labor case for payment of withheld salaries. Reason: NCC can only be violated after termination of EER.

1.2.2. **Century Properties, Inc. v. Babiano, et al.**, G.R. No. 220978, 5 July 2016. If the NCC provides that the employee shall not join a competitor company during and after his

employment as an employee, agent or consultant and he violates his undertaking by joining another company engaged in the same line of business as an agent or consultant (not as an employee), the claim for liquidated damages is no longer a post-employment claim. Reason: the NCC can be violated even during employment.

2. **Sole Reference to Labor Law Rule**

The core issue of the case must be resolvable thru the application **solely** of Labor Law. If resolvable thru the application **also** of other laws, e.g., NCC, Constitution and CEDAW, the case should be brought to a regular court (**Halaguena, et al. v. PAL**, 2 October 2009).

Note:

2.1. **Labor Issue.** It is an issue pertaining to remuneration, health and safety, self-organization, representation (Art. 292, Labor Code) or tenure (**Art. 294, Labor Code**).

Habeas Data

Meralco v. Lim

G.R. No. 184769, 5 October 2010
(En Banc)

Meralco directed the transfer of Lim from Bulacan to Laguna based on a report that she was under threat by unknown persons. She regarded her transfer as punitive and not attended by due process. She also downplayed the threat, calling it a joke. In order to frustrate her transfer, she demanded for a copy of the alleged report. However, Meralco deemed it wise not to accede to her demand. Consequently, she filed a petition for writ of *habeas data* with the Bulacan RTC, praying for a TRO also to stop her

transfer. The court gave her a TRO as well as a writ of *habeas data*.

The Supreme Court held that the writ of *habeas data* was not available for the protection of property or commercial interests. Since employment is a property right then the remedy was not proper. Moreover, Meralco was not engaged in collecting and storing of data or information; hence, it could not be proceeded against *via* a petition for a writ of *habeas data*. Finally, the RTC had no jurisdiction because the dispute was a labor dispute because it arose from the alleged violation of tenurial right and statutory due process.

2.2. **Civil Issue.** One that does not arise from matters pertaining to working hours, wage and benefits (remunerative labor standards issue), health and safety (protective labor standards issue), right to organize (organizational issue), right to represent workers for purposes of collective bargaining (representation issue), or right to tenure (tenurial issue).

The NLRC can determine the civil issue of property ownership if necessary in resolving a labor issue, *e.g.*, propriety of withholding an employee's last salary.

Milan v. NLRC

G.R. No. 202961, 4 February 2015

The NLRC can determine the issue of property ownership when it aids it in resolving a labor issue. Whether or not to order the payment of an employee's last salary which has been withheld for lack of clearance over properties in his possession is resolvable by first determining the ownership of said properties.

Hypothetical Problem

For violating a non-compete clause, a resigned employee's last pay was withheld. This prompted him to file a recovery complaint with the LA. In the case, the employer interposed a counterclaim for liquidated damages based on said violation. It also argued that payment of the salary required prior processing of clearance which was not likely to be issued owing to the employee's continued possession of company laptop and files. In defense, the employee argued that subject properties were his. Does the LA have jurisdiction over the case?

Note:

The problem involves three issues: (a) the employee's money claim; (b) the employer's counterclaim; and (c) the ownership issue.

Answer

The answers to the three underlying questions are as follows:

(a) The LA has jurisdiction to hear and resolve the issue of unlawful withholding of salary because the claim has reasonable causal connection to employer-employee relationship and the alleged illegal withholding is resolvable thru the application solely of Art. 113 of the Labor Code.

(b) The LA has no jurisdiction over the counterclaim because it is a post-employment claim.

(c) The LA can preliminarily resolve the property issue because it is necessary to the resolution of the issue of unlawful withholding of salary.

Related Matters

1. Pointers on Employer-Employee Relationship

1.1 A Question of

Fact. Surrounding facts determine the factual existence of EER. Administrative agencies determine its factual existence, subject to the duty of the courts to respect that finding and, if based on substantial evidence, to accord it finality.

Law. If law ordains that it exists then parties to agreements cannot stipulate against it.

Note:

As a question of law, EER is “intended” by law, i.e., law gives it its meaning, signification or concept. It is a fact if the “intention” has an “extension” or an ‘out there” counterpart or representation. Hence, the law conceptualizes EER as a legal tie that rests on Labor Law concept of control, i.e., means and methods control. Does the relationship between A and B represent this legal tie? If yes, because B controls both result and A’s means of attaining it, “intention” and “extension” are deemed connected. Therefore, a real EER obtains between A and B.

1.2. Important Characteristics of EER

1.2.1. **Assymetrical (Milan v. NLRC, G.R. No. 202961, 4 Feb. 2015).** Asymmetrical or relation between non-equals. (Apply: Social Utility Theory, J. Leonen; Theory of Compassionate Justice)

1.2.2. **Inter-party** (Party autonomy; preferential use of voluntary modes)

1.2.3. **Contractual & Impressed with public interest (Art. 1700, NCC)**

1.2.4. **In Personam** (Principle of Total Insulation; Principle of Limited Liability; Principle of Unaltered Responsibility; Principle

of Separate Legal Personalities; Principle of Piercing the Veil of Corporate Fiction; Instrumentality Rule)

2. EER Tests

2.1. Four-Fold Test: Its Component Tests

2.1.1. Selection Test

2.1.2. Wage Test

2.1.3. Dismissal Test

2.1.4. Control Test (CT)

2.2. Economic Dependence Test (EDT)

2.3. Two-tier Test (CT + EDT)

2.4. Ministerial Exception Rule/Ecclesiastical Affair Test

Note:

1. **Art. 295, Labor Code** (formerly Art. 280) is an employee status test and not an EER test. In other words, the nature of work as necessary or desirable does not signal EER because such kind of work can be contracted out to an independent contractor as well.

2. If an employee works for less than 8 hours daily, it does not destroy his employee status (**Legend Hotel Manila Case**, J Bersamin).

3. A stipulation in a contract that the personal services of the party engaged be paid with talent fees does not rule out EER if the amount of the fee approximates that of a wage only. Art. 97 of the Labor Code, on wage, uses the term "however designated" which includes talent fees if of such amount only (*id.*).

4. Mode of compensation, e.g., payment based on result, does not contradict EER. Hence, pieceraters, workers paid on task basis, and workers paid on purely com-

mission basis are employees. Their classification as such simply affects their entitlement to labor standards benefits. Hence, they cannot be denied tenure on that basis alone.

5. Designation of pay as “salary” on payslips is not an evidence of EER (**Reyes v. Glaucoma Foundation, Inc.**).

6. Stipulations on mandatory employee benefits, e.g., 13th month pay, will not make a *bona fide* talent an employee (**Sonza**).

3. Uses

3.1. Art. 82 (Labor Standards Claims)

3.1.1. **Jurisdiction** (Reasonable Causal Connection Rule, *supra*)

3.1.2. **Cause of Action**

Questions to Ask:

- (a) Is the claimant an employee?
- (b) Is he covered?
- (c) Is he suffering from a special disqualification? (Less than 10 Rule for HP; Less than 10 Rule for SIL; and Not More Than 5 Rule for NSD)
- (d) Has he complied with the prerequisites of his claim (e.g., rendition of work between 10:00 p.m. and 6:00 a.m. for NSD)
- (e) Does the employer have a valid defense? (prescription, waiver, payment, *res judicata*, etc.)

3.2. Coverage of Right to Self-Organization

3.2.1. Right to join (right of workers)

3.2.2. Right to Vote in a CE (right of employees)

3.2.3. Right to Participate in a Strike (right of employees; RTC can issue TRO to bar non-employees)

3.3. Coverage of 13th Month Pay (PD 851)

3.3.1. Right of all land-based employees receiving basic salary

3.3.2. Agricultural lessees do not get 13th month pay

3.3.3. Independent contractor talents (non-employees) get it under Advisory 4, s. 2016

3.4. SSS Coverage (R.A 8282)

All employees enjoy SSS coverage, except CAFGO (purely Casual employees, Filipinos engaged by Alien vessels while outside Philippine territory, employees of Foreign governments & international organizations (unless covered by administrative agreements between their employers and SSS), Government employees and other employees excluded by the Commission (e.g., employees of a job contractor *vis-à-vis* the latter's principal).

2014 Bar (Purely Casual Employee)

Simplification:

Don Luis was approached by Lando for a job. The former had no need for the latter's services then. Realizing later there was a need to trim his plants, he looked for Lando and engaged him.

(a) Was there employer-employee relationship between Don Luis and Lando?

(b) Did Don Luis have the duty to report Lando for SSS coverage?

Note:

Since it is obvious that the examiner had wanted to surface “purely casual employee”, the answer to Letter “a” should be Yes; otherwise, one could not speak of a purely casual employee if Lando was not an employee. To Letter “b”, therefore, the answer should be No because Lando was a purely casual employee. Note that the Bar problem used past tense; hence, the answer should be past tense.

Hypothetical Question (Connecting R.A. 8282 to R.A. 10361)

The examiner can always repeat the 2014 Bar problem. If inclined to, he might increase the points assignment. As to why, he would want the *Kasambahay Act* to be mentioned also in the answer. To earn maximum points, one should add that Lando has no SSS coverage (although a gardener, hence, a *kasambahay*) because his **casual** engagement is at the same time **sporadic** or **occasional** only.

3.5. GSIS Coverage (R.A 8291)

The *Four-Fold Test* is also used to determine EER. The following have GSIS coverage:

- 3.5.1. Appointive and elective government employees;
- 3.5.2. Receiving basic salary; and
- 3.5.3. Not over 65 years of age.

Aspects of Labor Procedure

1. Conferment of Jurisdiction

Subject to the **Express Stipulation Rule** or **Vivero Ruling** (jurisdiction by stipulation), the rule has always been that law confers jurisdiction over the subject matter of a case. Jurisdiction is conferred as follows:

1.1. **Voluntary Arbitrator (VA):** Subject to Grievance Machinery & SEnA

1.1.1. **Traditional Jurisdiction** over (a) CBA interpretation or implementation; and (b) enforcement or implementation of company personnel policy (**Art. 274, Labor Code**).

Note:

RTC has jurisdiction over a petition for declaratory relief seeking nullification of a CBA provision. Nullification is neither interpretation nor implementation (**Halaguena, et al. v. PAL**, 2 October 2009).

Jurisdiction by Stipulation (Express Stipulation Rule, **Vivero v. CA**, G.R. No. 138938, 24 October 2000). VA can hear and resolve pre-agreed disputes (**Art. 275, Labor Code**).

1.2. **Labor Arbiter (LA):** Subject to SEnA

1.2.1. Cases conferred by

- (a) Art. 224, Labor Code;
- (b) Sec. 7, R.A. 10022 (OFW money claims);
- (b) POEA-SEC (Seafarers' money claims)
- (c) NLRC Rules of Procedure
 - (i) Referred wages distortion disputes in UE; and

(ii) Enforcement of compromise agreements.

1.2.2. **Except** intracorporate controversies (**Matling Industrial & Commercial Corp. v. Coros**, 13 October 2010)

1.3. **Regional Director (RD): Subject to SEnA**

1.3.1. Kasambahay (**Sec. 37, R.A. 10361**)

1.3.2. Media Talents (**Advisory 4, S. 2016**)

1.3.3. Apprentices (after exhaustion of administrative remedies)

1.3.4. Art. 128 (money claims and health & safety issues)

1.3.5. Art. 129 (subject to SEnA, simple money claims)

1.3.6. WACLIU Disputes (inter & intra union disputes involving Workers Associations (WA), Charters & Locals (CL) and Independent Unions (IU))

1.3.7. CR Cancellation (**Direct Attack Rule**)

1.3.8. CBA Deregistration

1.4. **Med-Arbiter** (CE Petitions): No SEnA since a CE petition is not a complaint.

1.4.1. **CE Petition**

If not verified, Med-Arbiter should not dismiss the petition because CE does not initiate a litigation. It is just a means of verification as to the workers' will on which union must represent them.

1.4.2. **Valid CE Petition**

- (a) Formal Requisites: The petition must
 - (i) be in writing;
 - (ii) be signed and verified.
- (b) Substantial Requisites: The petition must state
 - (i) that the petitioner is a legitimate labor organization with CR;
 - (ii) that the petition is not barred;
 - (iii) name, address and nature of business of employer;
 - (iv) a description of the CBU sought to be represented;
 - (v) approximate number of employees in the CBU;
 - (vi) the names and addresses of other LLOs in the CBU;
 - (vii) that the establishment is organized or unorganized;
 - (viii) if organized, it is supported by 25% of the CBU members whose names must be submitted.

1.4.3. **Nature of CE.**

CE is investigative. Being so, the employer is a standby; hence, he cannot move to dismiss

a CE petition, or appeal a CE order, *i.e.*, in un-organized establishments (**The Heritage Hotel Manila, et al v. SOLE, et al.**, G.R. No. 172132, 23 July 2014). A CE is just a mode of verification and not a litigation. Being so, an EER finding made by the Med-Arbiter does not amount to *res judicata* in a case before the NLRC (**Sandoval Shipyards, Inc. v. Pepito**, G. R. No. 143428, 25 June 2001).

1.4.4. Valid CE Requisites

- (a) Not barred; and
- (b) Majority of the eligible voters cast their votes (**Major ELVOT CASVOT**)

Non-ELVOTs:

- (i) Non-employees
- (ii) Non-members of the CBU involved
- (iii) CBU members of less than 3 months
- (iv) Confidential employees;
- (v) Legal secretaries; corporate secretaries
- (vi) Subversives (this will not be given in light of the repeal of the Anti-Subversion Act)
- (vii) Dismissed employees, unless: dismissed by reason of ULP or current labor dispute; no substantially equivalent and regular employment yet; and they contested their dismissal before a **forum of appropriate jurisdiction.**

- 1.4.5. **CE Winner:** Union with majority vote based on the valid votes (**Major VOT VALVOT**)

2. **Acquisition of Jurisdiction**

Jurisdiction conferred must be lawfully acquired; otherwise, it cannot be exercised. The filing of a verified complaint bearing a non-forum shopping certification is the usual manner of initiating acquisition of labor jurisdiction.

By way of exception, the Regional Director acquires visitorial jurisdiction by serving a notice of inspection on establishments.

1. **Voluntary Arbitrator (VA)**

1.1. **Modes of Acquisition**

1.1.1. Thru a **Submission Agreement (SA)** if both employer and contracting union are willing to submit their dispute to voluntary arbitration.

1.1.2. Thru a **Notice to Arbitrate (NTA)** if one of them is unwilling. Only the exclusive bargaining representative (EBR) or sole exclusive bargaining agent (SEBA) can serve an NTA (**Tabigue vs. Interco**, G.R. No. 183335, 23 December 2009).

1.1.3. By **Appointment** if both are unwilling despite their contractual obligation to go to the VA. If before the LA, they can appoint the LA as their VA.

1.2. Appeal of the Decision of the LA appointed as VA. Same rules.

1.2.1. Appeal shall be to the CA, not NLRC because the LA's decision is that of an "LA sitting as VA by appointment".

1.2.2. Appeal period: VA to CA under Rule 43, Rules of Court, is 15 days. The 10 days under Art. 276 Labor Code, is the period for filing an MR with the VA. (**Guagua National Colleges v. CA, 28 Aug. 2018**)

1.2.3. Rule 43 does not require an appeal bond.

2. Labor Arbiter (LA)

UPDATE: "Workplace" now includes flexible, hybrid, and remote work arrangements. At the employee's option, complaints may be filed in the Regional Arbitration Branch (RAB) having jurisdiction over the complainant's residence, pursuant to the 2025 NLRC Rules.

2.1. Complaint & Summons

Jurisdiction is acquired thru the filing of a verified complaint (**Sec. 1, Rule III, 2011 NLRC Rules of Procedure, as amended**) and service of summons (**Sec. 3, Rule V, 2011 NLRC Rules of Procedure, as amended**) following referral for filing of complaint after a failed SEnA (**Sec. 1, R.A. 10396; Art. 234, Labor Code**). Only matters included in the complaint are deemed brought; hence, un-brought causes cannot be prosecuted in the complainant's position paper (**Sec. 12 (c), Rule V, 2011 NLRC Rules of Procedure, as amended**) and relief not prayed for cannot be awarded, unless implied. For example, the complaint charges illegal dismissal but does not include a prayer for backwages. Even the complainant's position paper does not ask for it. In such case,

backwages can be awarded being a logical consequence of a finding of illegal dismissal per **Santos v. NLRC** which is based on **Art. 279** (old) of the **Labor Code**.

2.2. **General Prayer for Relief (GPR)**

A relief not specifically prayed for can be awarded by virtue of the GPR if the facts alleged in the complaint and the evidence introduced so warrant (**BPI Family Savings Bank v. Buenaventura**, 508 Phil. 423, 2005). But its basis must at least be touched upon in the position paper or memorandum.

3. **Regional Director (RD)**

All references to D.O. 183, s. 2017 are deemed replaced with D.O. 238, s. 2023.

NOTE: D.O. 238, s. 2023 now governs labor standards enforcement, inspection, issuance of compliance orders, and prohibited pleadings in the exercise of visitorial and enforcement power under Article 128 of the Labor Code.

3.1. **Visitorial Power** (Art. 128)

3.1.1. Service of Notice of Inspection (D.O. 183, s. 2017)

3.1.2. Initiation

(a) Routine Inspection (*motu proprio*).

(b) Complaint Inspection (by complaint; when there is a SENa referral).

3.2. **Adjudicatory Power** (Art. 129)

3.2.1. Bringing (“must be brought”) of the Simple Money Claim.

3.2.2. Initiated by Complaint.

4. **Med-Arbiter**

Filing of verified CE Petition

5. **Bureau of Labor Relations (BLR)**

5.1. **Original Jurisdiction.** Jurisdiction is acquired thru the filing of a verified FInTCAM petition, *infra*.

5.2. **Appellate Jurisdiction.** Jurisdiction is acquired thru the perfection of a WACLIU appeal, *infra*.

6. **National Labor Relations Commission (NLRC)**

UPDATE: Under the 2025 NLRC Rules, perfection of appeal is jurisdictional and strictly applied. Any defect, including filing in the wrong office, late filing, or incomplete payment of fees or bond, results in outright dismissal. No presumption in favor of adjudication on the merits and no equity-based relaxation is favored.

6.1. Appeals (thru perfection of appeals from Art. 129 and Art. 224 decisions).

6.2. Injunction (by verified petition).

6.3. Extraordinary Remedies (by verified petition).

6.4. Certified Cases (thru a certification order from SOLE).

NOTE: Under the 2025 NLRC Rules, perfection of appeal is strictly construed. Filing in the wrong office or incomplete payment of appeal fees or bond results in outright dismissal. No equity-based relaxation is favored.

7. Secretary of Labor and Employment (SOLE)

- 7.1. **Review Power.** Acquired thru the perfection of an appeal. Under **D.O. 183, s. 2017**, an employer is not allowed to file a motion to reduce appeal bond when appealing a visitatorial order of the RD. No filing of MRs also with the RD for being dilatory (**D.O. 183, s. 2017**).
- 7.2. **Assumption Power.** Acquired whether there is a petition to assume or not. The remedy is given to the State and not to the parties to the dispute.
- 7.3. **Suspension Power.** Exercisable based on a report from below that an intended dismissal is in implementation of mass lay-off or will cause a serious labor dispute (**Art. 292, Labor Code**).
- 7.4. **Control & Supervision Power** is exercisable *sua sponte*.

3. Exercise of Jurisdiction

Jurisdiction must be exercised without grave abuse; otherwise, the effect would be ouster of jurisdiction resulting in a void judgment. Hence, that judgment can be vacated on appeal. And if it is an appellate tribunal that gravely abuses its review power, its judgment can be nullified by the certiorari or Rule 65 court.

3.1. Voluntary Arbitrator (VA)

3.1.1. After a failed Grievance Machinery (GM) proceedings, the VA shall hear and resolve the case. There is no need to refer the case to the GM if the VA has already acquired jurisdiction over it.

3.1.2. Per **Abalos, et al. v. Philex Mining Corp.**, the VA can issue an alias writ of execution ordering separation pay due to impossibility of reinstatement without violating:

- (a) Principle of Finality of Judgments;
and
- (b) Principle of Immutability of Final Judgments.

3.1.3. Immediate Reinstatement. The VA's reinstatement order is no different from the LA's reinstatement order due to the Full Protection Clause (**Baronda v. CA**, G.R No. 161006, 14 October 2015).

3.2. Labor Arbiter (LA)

3.2.1. Reception of Evidence and Judgment

3.2.2. Contempt (No TRO & injunctive power);

3.2.3. Residual Power to execute the reinstatement order, *i.e.*, despite appeal;

3.2.4. He must use every means to ascertain the facts of a case, including admission of a late position paper (**Immaculate Concepcion Ruling**).

3.3. Regional Director (RD)

3.3.1. **Visitorial Power: How enforced**

- (a) Issuance of compliance orders (COs); and

- (b) Issuance of writs of execution in the event of non-rectification of violations.

3.3.2. Prohibited Pleadings (D.O. 183, s. 2017)

- (a) Motion to reduce appeal bond
- (b) Motion to dismiss
- (c) Motion for bill of particulars
- (d) Motion for intervention
- (e) Motion for inhibition
- (f) MR of interlocutory orders
- (g) Motion to quash writ of execution
- (h) Dilatory and obstructive motions

3.3.3. Powers (exercisable when health and safety rules are violated):

- (a) Suspend business operations; and
- (b) Close establishments.

Note:

If found liable resulting in suspension or closure of his business, the employer shall be ordered to pay **replacement wages** to affected workers. This obligation attaches only if the order of suspension or closure is issued by the RD but not when it is issued by the DENR (**NAMAWU v. Marcopper Mining Corp.**, G.R. No. 174641, 11 November 2008).

3.3.4. Ouster of Jurisdiction

Sec. 3, Rule II of the Rules on the Disposition of Labor Standards Cases in the Regional Offices requires referral of cases to the

LA when employer-employee relationship no longer exists. However, if cessation of the relationship occurs in the course of the proceedings, **not before**, the RD shall not be ousted of his jurisdiction (**Rizal Security & Protective Services, Inc. v. Hon. Director Alex E. Maraan**, G.R. No. 124915, 18 February 2008). In **Catholic Vicariate of Baguio v. Hon. Sec. Sto. Tomas**, 2008, certain workers went home to their provinces in the course of the proceedings before the RD resulting in termination of EER. For that reason, they were unable to verify the appeal subsequently taken to the SOLE. Yet they were equally granted relief. All said, cessation of EER must take place before the RD takes cognizance of the case in order to validly support an ouster.

3.3.5 Visitorial Power is Exercisable Over Establishments

Visitorial power is not exercisable over individual workers but over establishments. Hence, once validly acquired, even if workers do not sign complaints or not all of them verify their appeal, they can be granted relief. (**Catholic Vicariate, supra**).

3.3.6 Adjudicatory Power (Art. 129)

It is the power to adjudicate simple money claims brought by complaint. Jurisdiction is based on "individual aggregate claims"; hence, the RD must refer the case to the LA if the total amount exceeds P5,000.00. Unlike visitorial power, adjudicatory power is not shared by the RD with the SOLE. Adjudicatory power does not cover health and safety issues; hence, the RD cannot suspend business operations or close establishments based on violations of Remune-

rative rules. Neither can he order payment of replacement wages.

3.3.7. **Visitorial Power (VP) v. Adjudicatory Power (AP)**

(a) **As to exercisability**, **VP** is exercisable over establishments; whereas, **AP** is exercisable over individual workers. Hence, once a Notice of Inspection has been served, verification by all employees of the appeal taken from the RD to the SOLE is not required. Less than all can verify it (**Catholic Vicariate of Baguio v. Sec. Sto. Tomas**, G.R. No. , 2008).

(b) **As to appeal**, a **VP** order is appealable to the **SOLE** in **10** days; whereas, an **AP** decision is appealable to the **NLRC** in **5** days.

(c) **As to motion to reduce appeal bond**, it is not available in **VP** appeals; whereas, it is available in **AP** appeals because NLRC rules govern said appeals.

(d) **As to extent of power**, **VP** covers money claims and health & safety issues; whereas, **AP** covers simple money claims only.

(e) **As to power of suspension & closure**, it is part of **VP**; whereas, **AP** does not allow the RD to suspend or close.

3.4. **Med-Arbiter**

3.4.1. **Resolution of CE Petitions**

- (a) Must hear and resolve, if the establishment is organized.
- (b) Must automatically grant, if the establishment is unorganized.

3.4.2. **Certification of Winner**

(a) EBR by virtue of CE or Con-EL (Run-off Election)

Where the mode of selection is traditional CE or Con-El, EBR status is conferred thru certification by the Med-Arbiter.

(b) EBR by virtue of SEBA Request

A SEBA request is addressed to the RD. If granted, the Med-Arbiter will certify the requesting union as the EBR/SEBA.

3.5. **Secretary of Labor & Employment (SOLE)**

3.5.1. **Powers**

(a) **Review Power**

In **The Heritage Hotel Manila v. NUWHRAIN-HHMSC**, G.R. No. 178296, 12 January 2011, the RD reviewed the CE Order of the Med-Arbiter. In turn, the BLR reviewed the decision of the RD. When the BLR Director inhibited, being former counsel of the respondents, the SOLE reviewed the case.

(b) **Assumption Power (Art. 278(g), Labor Code)**

Characteristics: broad, plenary, extraordinary and discretionary (omit “full” because “plenary” means “full” as in “Ave Maria, gratia plena ... Hail Mary, full of grace.”)

Limit to Discretionary Power. “Where anything is left to any person to be done according to his discretion, the law intends it must be done with a sound discretion, and according to law... It is not a

mental discretion to be exercised *ex gratia*, but a **legal discretion** to be exercised in conformity with the spirit of the law, and in a manner to subserve and not to impede or defeat the ends of substantial justice.” (**Lamb v. Phipps**, 22 Phil 488, cited in **PLDT v. CA, et al.**, G.R. No. 162783, 14 July 2005).

(c) Suspension Power (Art. 292, Labor Code)

In the event of a *prima facie* finding that the intended dismissal in implementation of a mass lay-off or will cause a serious labor dispute, the SOLE’s representatives, *e.g.*, RD, can submit a report to that effect. Acting on said report, the SOLE may suspend the effects of the dismissal (**Art. 292, Labor Code**). The NLRC cannot TRO an intended dismissal. Neither can the RD TRO a dismissal for an authorized cause even if he should find same to be in bad faith. There are no such remedies. So if the examiner will ask for a remedy, one may give him the suspension power of the SOLE, *i.e.*, convince the RD/LA to make and submit such report so that, on its basis, the SOLE may exercise his power to suspend.

(d) Control and Supervision Power

In the event of **inhibition** by the BLR Director in an appeal, the case can be brought up to the SOLE for resolution in the exercise of his power of control and supervision over the BLR. However, if the BLR Director is **incapacitated**, the case should be brought down to his subordinates (**The Heritage Hotel Manila v. NUWHRAIN-HHMSC**, G.R. No. 178296, 12 January 2011).

3.6. Med-Arbiter

3.6.1. Powers

(a) Issue CE Orders

The Med-Arbiter hears and resolves verified CE petitions. If not verified, he should not dismiss the petition because **CE is not a litigation** but a **mode of verification** only to determine the workers' choice as to which union should represent them for purposes of collective bargaining. A CE order is not a judgment on the merits; hence, his finding of EER does not amount to *res judicata* (**Sandoval Shipyards, Inc. v. Pepito, et al.**, G.R. No. 143428, 25 June 2001).

(b) Certify the CE Winner

The Med-Arbiter does not conduct the election. After allowing the petition thru his CE Order, the case goes to an election officer of the DOLE-RD who conducts it. If the election yields a winner, the Med-Arbiter will certify it as the EBR.

3.6.2. No Collateral Attack Rule (NCAR)

The legal personality of the petitioning union cannot be challenged in the CE proceedings pursuant to the NCAR. Only a direct attack is allowed. Why? To attack means to seek CR cancellation which is for the RD to grant. The basis of the NCAR, therefore, is lack of jurisdiction.

3.6.3. No Prejudicial Questions Rule (NPQR)

Hypothetical Problem

ABC Union files a CE petition with the Med-Arbiter.
XYZ Union files a CR cancellation petition/complaint

against it with the RD. Thereafter, it moves for the suspension of the CE proceedings on the ground that the cancellation proceedings is a prejudicial question. Should the Med-Arbiter suspend?

Answer

No. Under **D.O. 40-03**, prejudicial questions have been unrecognized unlike under the regime of the Fortune Tobacco Case. So the CE proceedings must continue, subject to the outcome of the cancellation proceedings.

3.6.4. EBR Decertification

Hypothetical Problem

Suppose the CE petition is resolved ahead of the cancellation petition resulting in the certification of ABC Union as the EBR, what would be the remedy of XYZ Union?

Answer

XYZ Union may file a petition for decertification with the Med-Arbiter.

3.6.5. CBA Deregistration

Hypothetical Problem

Suppose, after certification, a CBA is entered into followed by the cancellation of the CR of ABC Union, what would be the remedy of XYZ Union?

Answer

XYZ Union may file a petition for CBA deregistration with the RD.

Note: CBA deregistration will destroy the Contract Bar; hence, XYZ Union can file a CE petition before the onset of the freedom period of subject CBA.

3.7. Bureau of Labor Relations (BLR)

3.7.1. Original Jurisdiction over FInTCAM Cases

(a) FInTCAM (Federations, Industry Unions, Trade Centers & Chapters, Affiliates, Members)

(b) Cases

(i) Inter-Union Cases (e.g., CAM v. FInT).

(ii) Intra-Union Cases (e.g., FInT members v. FInT officers).

3.7.2. Appellate Jurisdiction over decisions in WACLIU Cases

(a) WACLIU (Workers Associations, Charters, Locals, Independent Unions)

(b) WACLIU Decisions

(i) Inter-Union decisions of RD (XYZ Union v. ABC Union for CR cancellation).

(ii) Intra-Union decisions of RD (Members of XYZ Union v. Officers of XYZ Union for disciplinary action due to misuse of union funds).

3.7.3. CE Appeals and CE Protests

Appeals from CE orders go up to the BLR; whereas, orders disposing of protests challenging CE results go up to the SOLE.

Reason: CE order is issued by the Med-Arbiter who is under the BLR; whereas, election protests are resolved by the RD who is under the SOLE.

3.7.4. **CE Petitions in the Public Sector**

The Med-Arbiter does not hear and resolve CE petitions under E.O. 180. It is the BLR which has jurisdiction.

3.8. **National Labor Relations Commission**

3.8.1. **Appellate Power**

(a) **Art. 225(c)**, formerly Art. 218(c), of the **Labor Code** allows the NLRC to “correct, amend, or waive any error, defect or irregularity whether in substance or in form” in the exercise of its appellate power.

(b) **Art. 225(c)** shall not be interpreted to mean that the NLRC can open a case for total review, including un-brought issues. In fact, **Sec. 4(d), Rule VI** of the **2011 NLRC Rules of Procedure, as amended**, now provides that “it shall limit itself to reviewing and deciding only the specific issues that were elevated on appeal.” (**Rodolfo Luna v. Allado Construction, Inc.**, G.R. No. 175251, 30 May 2011).

Illustration

The LA awarded salaries for the unexpired portion of an OFW’s pre-terminated contract. The recruiter appealed the money judgment, questioning the LA’s straight computation insisting that the Lesser Amount Rule should have been observed. Meantime, the OFW took no appeal even if the LA did not order reimbursement of her placement fee and plane fare. On appeal, the NLRC modified the decision by or-

dering the reimbursements withheld by the LA. Sec. 4(d), Rule VI, supra, does not allow the total review made. This rule was found also in the 2002 and 2005 NLRC Rules.

3.8.2. Compulsory Arbitration Power (Rule VIII, 2011 NLRC Rules of Procedure, as amended)

(a) **Certified Labor Disputes (Sec. 2).** Certified disputes are cases certified to the Commission for compulsory arbitration under Art 263 (now 278) (g) of the Labor Code, as amended.

(b) **Effects of Certification (Sec. 3)**

(i) The intended strike or lockout is automatically enjoined, i.e., even pending resolution or non-resolution of an MR. If effected already, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and admit all workers under the same terms and conditions;

(ii) Except where the CO states otherwise, all cases between the same parties so far as they are relevant or are proper incidents of the certified case, shall be subsumed to the certified case. The parties shall inform their counsels and the Division concerned of all pending cases of said nature between the before the LA or VA.

(c) **Effects of Defiance (Sec. 4).** Non-compliance with the CO shall be considered as an illegal act committed in the course of the strike or lockout and shall authorize the Commission to enforce the same under pain of immediate disciplinary action, including dismissal or loss of employment status, or payment of backwages by the locking-out employer,

including damages – even criminal prosecution of the liable parties.

(d) **Execution of Judgment (Sec. 6).** Upon issuance of the entry of judgment, the Commission, *motu proprio* or on motion, may cause the execution of the judgment in the certified case.

3.8.3. Injunctive Power of the NLRC

(a) Types of Injunctive Power

(i) Ordinary, *e.g.*, restraining an illegal strike;

(ii) Ancillary, as an incident of its appellate power; and

(iii) Extraordinary, Rule XII, 2011 NLRC Rules, as amended.

(b) The Dollar Smuggling Case

Under present law, an employee cannot invoke the injunctive power of the NLRC to stop his dismissal. Given its character as an ancillary remedy only, injunction cannot issue before a principal case is born of an actual dismissal. In **PAL v. NLRC**, G.R. No. 120567 20 March 1998, the PAL management rendered a resolution to dismiss two flight stewards for their alleged involvement in the 3 April 1993 currency smuggling in Hong Kong. Instead of filing a complaint for illegal dismissal, the latter filed with the NLRC a petition for injunction praying that a TRO be issued prohibiting PAL from carrying out its resolution to dismiss them. The NLRC granted their petition, reasoning that to file an illegal dismissal suit with the Labor Arbiter was not an “adequate” remedy since it took three years before it could be disposed of. The Supreme Court brushed that aside. An “**adequate**” **remedy at law** has been defined as one “**that affords**

relief with reference to the matter in controversy, and which is appropriate to the particular circumstances of the case.” It is a remedy which is equally beneficial, speedy and sufficient which will promptly relieve the petitioner from the injurious effects of the acts complained of. In *Lamb vs. Phipps*, it ruled that **if the remedy is specifically provided by law, it is presumed to be adequate.**

The Court said that the petition could also be entertained by the Labor Arbiter who had the ancillary power to issue preliminary injunctions or restraining orders as an incident in the cases pending before him in order to preserve the rights of the parties during the pendency of the case.

Note:

1. Under the new rules, a Labor Arbiter has no TRO and injunction powers anymore.

2. In like manner, the DOLE-RD cannot restrain an intended retrenchment upon his finding that the good faith character of the intended dismissal is in question. However, based on his report to the SOLE that the intended dismissal would likely result in a mass lay-off or would aggravate a current labor dispute, the latter may exercise his suspension power under Art. 292 of the Labor Code. In the exercise of said power, the SOLE may suspend the effects of the dismissal.

3. In **SMC v. NLRC**, G.R. No. 119293, 10 June 2003), the **employer invoked the NLRC’s ordinary injunctive power** to enjoin an illegal strike, **e.g.**, one about to be carried out even after the NCMB has converted the union’s notice of strike to preventive **mediation. The effect** of the conversion **was it dropped** the strike notice from the roll of strike

notices; hence, as though none **had** been served at all.

4. **Art. 218**, now **Art. 255**, gives the NLRC the power to enjoin or restrain actual or threatened commission of any or all prohibited or unlawful acts. **Art. 264(a)**, now **Art. 279(a)**, enumerates prohibited activities of employers and labor organizations, *e.g.*, strike *sans* notice.

5. **Sec. 2(a), Rule X, 2011 NLRC Rules of Procedure, as amended**, expressly allows the NLRC to TRO prohibited or unlawful acts. However, it cannot issue a writ of injunction without prior notice and hearing. This time, unlike before the LA, a party has the right to **cross-examine**.

6. **Rule XII, 2011 NLRC Rules of Procedure, as amended**, allows the NLRC to TRO or enjoin by writ any order issued by the LA.

3.8.4. **Contempt Power (Rule IX)**

3.8.5. **Rule-Making Power**

(a) **Sec. 18, Rule XI (Restitution)**

Employer's TRO from the CA, a money judgment can be enforced notwithstanding the pendency of the employer's petition for certiorari. If, at the end of the day, the employer gets a final reversal of the judgment, he can move for the restitution of the money paid to satisfy it. However, Sec. 18, Rule XI requires that the reversal judgment must direct restitution. In other words, if it is silent as to restitution, the LA cannot order restitution.

Note:

Wallem, *supra*, allows restitution even without judicial order of restitution.

(b) **Rule XII (Extraordinary Remedies)**

When jurisdiction is not exercised because:

1. It cannot be exercised by reason of —

1.1. Immunity from Suit

Note: Foreign Gov't-Owned Corporation

**Deutsche Gesellschaft Fur Technische
Zusammenarbeit, also known as German Agency for
Technical Cooperation (GTZ), et al. v. CA**
G.R. 152318, 16 April 2009

Questions to Ask:

1.1.1. Is the foreign-owned corporation incorporated?

No. It must be treated as an extension of the foreign government; hence, it must be accorded immunity.

Yes. Perhaps it enjoys immunity.

1.1.2. If registered, does the private law under which it was incorporated give it the power to sue and be sued?

No. It has immunity.

Yes. It has no immunity (if it can sue then it can be sued also).

1.1.3. What if the foreign private law cannot be found, or is silent on power to sue and be sued?

If the foreign private law cannot be found or is silent on power to sue and be sued, it shall be presumed to be the same as the Corporation Code which gives corporations that power. Hence, the foreign corporation should not be accorded immunity.

How Immunity is Proven

World Health Organization v. Aquino, 40 SCRA 242 (1972). The DFA Secretary sent the trial court a **telegram** to convey respondents' immunity.

Int'l Catholic Migration Commission v. Calleja, 190 SCRA 130 (1990). The DFA Secretary sent a **letter** directly to the DOLE Secretary that respondent enjoyed diplomatic immunity.

Baer v. Tizon, 57 SCRA 1 (1974). The U.S. Embassy asked the DFA Secretary to request the SolGen to make a **suggestion** to the trial judge for the Commander of the US Naval Base in Olongapo City. The SolGen submitted a **Manifestation and Memorandum** as *amicus curiae* embodying the suggestion.

Processual Presumption Theory/ Presumed Identity Approach

Edi-StaffBuilders International, Inc. v. NLRC, et al.

G.R. No. 145587, 26 October 2007

A Saudi labor law, alleged but not proven, shall be presumed to be the same as Philippine labor law.² Based on Philippine law, a dismissal must be for a just or authorized cause to be valid.

Curious Question

Is there a right to be sued? If so, who would exercise it?

Comment:

The **No Collateral Attack Rule** (NCAR) in certification elections may give meaning where there is no apparent meaning. When a rival union challenges the legal per-

² Immunity Cases: China National Machinery & Equipment Corp (Group) v. Hon. Cesar D. Purisima, et al. (*en banc*), G.R. No. 185572, 7 February 2012; Holy See v. Rosario, G.R. No. 101949, 1 December 1994 (Jus Imperii v. Jus Gestionis).

sonality of the petitioner union, the latter will most probably invoke the NCAR and move that the challenge be dismissed. But what exactly is the foundation of the rule (*aka* **Direct Attack Rule**) invoked? It is lack of jurisdiction, plain and simple. It is the DOLE-RD who can pass upon the issue. Hence, the counter challenge to the challenge can be reduced to this: "*Sue me before the DOLE-RD. I have the right to be sued there.*"

1.2. Commencement Order (CO)

A **CO** shall include a Suspension or Stay Order prohibiting the sale or disposition of assets of the debtor and ordering the **suspension of all actions** against the debtor and/or the debtor's estate (**FRIA**).

Exceptions: Sec. 18, FRIA

1.2.1. Cases already pending appeal in the Supreme Court as of commencement date: Provided, That any final and executory judgment arising from such appeal shall be referred to the court for appropriate action;

1.2.2. Subject to the discretion of the court, cases pending or filed at a specialized court or quasi-judicial agency which, upon determination by the court, is capable of resolving the claim more quickly, fairly and efficiently than the court: Provided, That any final and executory judgment of such court or agency shall be referred to the court and shall be treated as a non-disputed claim;

1.2.3. Enforcement of claims against sureties and other persons solidarily liable with the debtor, and third party or accommodation mortgagors as well as issuers of letters of credit, unless the property subject of the third party or accommodation mortgage is necessary for the rehabilitation of the debtor as determined by the court upon recommendation by the rehabilitation receiver;

1.2.4. Any form of action of customers or clients of a securities market participant to recover or otherwise claim moneys or securities entrusted to the latter in the ordinary course of the latter's business as well as any action of such securities market participant or the appropriate regulatory agency or self-regulating organization to pay or settle such claims or liabilities;

1.2.5. The actions of a licensed broker or dealer to sell pledged securities of a debtor pursuant to a securities pledge.

Note:

Philippine Airlines v. Court of Appeals

G.R. No. 150592, 20 January 2009

The stay order suspends the proceedings and not just the enforcement of the claim. However, the 2008 Rules allow the commencement of actions to prevent prescription of actions.

1.3. TRO or Injunctive Writ under Rule XII, 2011 NLRC Rules of Procedure, as amended

When proceedings of the Labor Arbiter are enjoined under this rule, he cannot act on the case. Hence, if despite a timely objection to venue, he still proceeds to receive evidence without resolving the motion to dismiss first then a Rule XII order will stop him in his tracks. In this regard, improper venue can only be challenged *via* a motion to dismiss on that ground filed before the first preliminary mandatory conference before the Labor Arbiter, *i.e.*, after SENa conference/s. Venue is never questioned during SENa even if conducted by a SENa officer (SEADO) not belonging to the Arbitration Branch/Regional Office having territorial jurisdiction over the potential case. Hence, a SENa request can be made in Baguio

City by a worker whose place of work is the NCR. However, when SEnA fails and a complaint for illegal dismissal becomes unavoidable, it must be filed with the NCR. If filed in Baguio, venue can be challenged.

1.4. Sec. 1, R.A. 10396 (now in Art. 234, Labor Code)

No complaint shall be admitted unless the disputants have undergone SEnA proceedings first. If the complaint is improvidently admitted and raffled, the respondent can invoke the provision and ask for the dismissal of the case. In such situation, the Labor Arbiter cannot receive evidence and render judgment. If he issues an order for the submission of position papers, it can be assailed under Rule XII of the 2011 NLRC Rules of Procedure, as amended.

1.5. Non-exhaustion of Administrative Remedies

The RD has jurisdiction over complaints based on violations of the terms and conditions of apprenticeship agreements. On the other hand, the LA has jurisdiction over the complaints of learners. An apprentice has an administrative remedy (ventilation of his cause before the plant apprenticeship committee or PAC); whereas, a learner has none. The RD must dismiss the complaint of an apprentice who has not used his PAC remedy first.

1.6. Assumption of Jurisdiction Order (AJO)

When the SOLE assumes jurisdiction, all pending cases before the RD, LA and VA shall be put on hold and transmitted to the SOLE for resolution. Assumption power is a comprehensive and plenary power; hence, all issues between the parties elsewhere shall be subsumed to the NI case for orderly administration of justice.

1.7. Ouster of Jurisdiction

Under **Art. 128, Labor Code**, the visitorial and enforcement power of the RD can be challenged *via* a motion for ouster of jurisdiction, or a motion for referral to the LA. There are two grounds: (a) cessation of EER to support the first; and (c) unresolved issues arising from unverifiable documentary evidence to support the second.

Anent the first ground, when EER has ceased prior to the RD's taking cognizance of the case, *i.e.*, prior to the service of a notice of inspection – which is what allows him to acquire jurisdiction over establishments – the case should be referred to the LA who shall hear and resolve it. In effect, the RD shall dismiss it for lack of jurisdiction but it will be heard and resolved by the LA even if EER has ceased. The LA has jurisdiction because the money claim has reasonable causal connection to EER. **As respects the second**, when referral is requested for evidentiary reasons, the RD has jurisdiction; however, due process requires him to allow the employer to submit to the LA evidence not available – hence, not verifiable – during inspection.

The RD's Art. 128 power requires continuing EER. Hence, if it has ceased then he has no jurisdiction – except, however, if the cessation follows service of the inspection notice in which case he shall continue to hear the case (**Catholic Vicariate of Baguio v. Hon. Patricia Sto. Tomas**, G.R. No. 167334, 7 March 2008). In contrast, the LA's jurisdiction always survives EER. Hence, even if it has ceased, he can hear and resolve claims for unpaid salaries and benefits totalling more than P5,000.00 per complainant.

2. **It should not be exercised.**

A labor tribunal may have been conferred jurisdiction over a particular case, which case may have been properly brought to it as to acquire the power to hear and resolve it. However, that power **ought not to be exercised** in the following:

2.1. The tribunal is a *forum non conveniens*.

Forum non conveniens, usually a transnational matter, is not a jurisdictional matter. A Philippine labor tribunal may be conferred jurisdiction; however, it should not exercise it —although it has acquired it — because it is not a convenient forum. If it cannot enforce its judgment outside Philippine territory, it should not hear and resolve the case before it (**Principle of Effectivity of Judgments**). In the **Manila Hotel Case**, *infra*, the elements of the case were all foreign save that the complainant was a Filipino national. On that basis, among others, the NLRC was deemed a *forum non conveniens*.

Courts have the discretionary power to decline resolution of a case by reason of *forum non conveniens*, *i.e.*, where another court or *forum* is much more suited to hear and resolve it. This discretionary power will not be exercised by them on motion by a party or *sua sponte* **unless** they have jurisdiction. The only issue, therefore, is whether they should first resolve the issue of jurisdiction (over subject matter and person) before dismissing a case based on *forum non conveniens*. Some maintain that there is no need to resolve jurisdiction; others opine that there is.

It will be recalled that some factors justify dismissal of a case based on *forum non conveniens*. The following can be cited:

- (a) Residence of the parties;
- (b) Location of witnesses and evidence;

- (c) Public policy; and
- (d) Burden on the court.

Manila Hotel Corp. v. NLRC

G.R. No. 120077, 13 October 2000

Marcelo Santos, a direct hire, applied for a job with Manila Hotel International Corp. in China while he was working in the Sultanate of Oman. He was later retrenched as an aftermath of the Tiannamen Square massacre. He sued Manila Hotel Corp., a domestic corporation and stockholder of Manila Hotel International Corp. which, in turn, was a foreign corporation doing business in China.

All the elements of the case (from hiring to dismissal took place in China) were foreign, except that complainant Santos was a Filipino national. The proper defendant was not a resident of the Philippines. Neither was it doing business in the country. The main witnesses were outside the country. Hence, the NLRC was a *forum non conveniens*.

Pakistan Int'l Airlines Corp. v. Hon. Blas F. Ople, et al.

G.R. No. 61594, 28 September 1990

All the elements of the case were Filipino, except that the respondent was a foreigner. The complainants were Filipinos, the employment contracts sued upon were entered into in the Philippines, they were partially executed in the Philippines, and Pakistan International Airlines Corp. had a local office. Hence, the DOLE was a convenient forum.

Foreign Element

Even after acquisition of jurisdiction, a local court may refuse to exercise it because of a foreign element, e.g., the contract sued upon was executed abroad. Of course, it may always choose to assume it, provided:

- (a) It is a forum that may be conveniently resorted to;

- (b) It can make an intelligent decision; and
- (c) It can effectively enforce its judgment.

Note:

In 2007 **Corazon Sim v. NLRC**, the contract sued upon was executed in Italy. Invoking **lex ex contractu**, the bank moved to dismiss the complaint for illegal dismissal filed with the LA on the ground of lack of jurisdiction. However, the Supreme Court held that Philippine Labor Relations Law has become extra-territorial by virtue of Sec. 10, R.A. 8042 (now Sec. 7, R.A. 10022). Hence, the LA had jurisdiction.

Would you have argued that the Office of the LA was a *forum non conveniens*? No, since the elements of the case were all Filipino. The bank, although operating in Italy, was a Filipino national.

2.2. Meritorious Motion to Inhibit

Orders granting motions to inhibit are subject to approval by the Executive Labor Arbiter (ELA). **D.O. 183-17** affecting cases before the Regional Director prohibits motions to inhibit just as it prohibits motions to reduce appeal bond.

2.3. Motion for Referral

Referral of cases by the Regional Director to the Labor Arbiter under **Art. 128** of the **Labor Code** is discretionary. At this point, a distinction must be made between “cessation of EER” and “issues not considered in the course of summary inspection.” If the ground for referral is cessation of EER, the RD must transmit the case to the LA for lack of jurisdiction. However, if the ground is the second, he has discretion “to refer” or “to not refer”.

Why?

The allegation that “issues were not considered in the course of summary inspection” can be dis-owned by the RD. Besides, he can rule that the supporting documents were actually verifiable in the course of summary inspection. In other words, he has the discretion “to agree” or “to not agree”.

Note: Subsistence of EER v. Pre-Existence of EER

2.3.1. If the RD’s jurisdiction is challenged on the ground that EER has ceased, *i.e.*, before service of his inspection notice, he must refer the case to the LA for lack of jurisdiction.

Question

Absent EER, why refer the case to the LA whose jurisdiction requires EER too?

Answer

Art. 128 requires the subsistence of EER; whereas, **Art. 224** requires the pre-existence of EER. If EER has ceased already before the RD took cognizance of the case, he cannot resolve it because his visitorial power **requires subsistence** (read as continuity) of EER. In contrast, the LA can take over – subject to the 5K jurisdictional amount rule - because his adjudicatory power **requires pre-existence** of EER only. If it existed before, he has jurisdiction.

2.3.2. If the motion to refer rests on the employer’s allegation that issues were not considered during summary inspection, which issues are supported by documentary evidence **not verifiable** during said inspection, the RD may refer the case to the LA so that adjudication may follow in which said evidence may be adduced thru the employer’s position paper. Notably, proceedings before the Labor Arbiter are not as summary as proceedings before the RD exercising visitorial power. If the supporting documents were

verifiable in the course of inspection, however, the RD may not refer. These are verifiable: payroll sheets, time sheets, SSS records, BIR forms, etc. But an SC ruling on the proper interpretation of the Double Indemnity Law not yet available during inspection may be used to support a motion for referral.

Interplay of Jurisdictions

1. National Interest Cases/Certified Cases

Manggagawa ng Komunikasyon of the Phil. v. PLDT

G.R. No. 190389, 19 April 2017

Question

The SOLE assumed jurisdiction over a strike based on ULP and illegal redundancy, ordering that the strikers be admitted back to work. The employer complied with the Return to Work Order (RTWO) but excluded those dismissed for redundancy. Meantime, the SOLE certified the case to the NLRC for conduct of compulsory arbitration on the issues of ULP and redundancy. Based on the RTWO, the dismissed workers filed a motion with the SOLE for issuance of a writ of execution that they may be admitted back to work. In due time, the NLRC dismissed the complaint for ULP and illegal dismissal.

(a) Is the decision of the NLRC reviewable by the SOLE who actually acquired jurisdiction over the case and simply certified it to the NLRC?

(b) Should the SOLE issue the writ prayed for?;

(c) As the union's counsel, would you pray for reinstatement wages for the period between date of issuance of the RTWO and the decision of the NLRC dismissing the complaint for illegal dismissal?

Answer

(a) The effect of a certification order is to re-vest jurisdiction on the NLRC. Hence, the NLRC does not perform a purely administrative function in certified cases. Its decisions in said cases are not recommendatory in nature only, subject to approval by the SOLE. Since they are decisions in contemplation of law, their mode of review is Rule 65 of the Rules of Court pursuant to St. Martin's.

(b) No. The decision of the NLRC has mooted the AJO. Hence, the duty to unconditionally – without qualifications – admit the strikers back to work under the same terms and conditions has no basis anymore.

(c) No. Reinstatement wages are proper only under a reinstatement order (RO) but not under a return to work order (RTWO). While both orders are immediately executory, they do not produce the same legal effect.

Note: RO v. RTWO

As to who issues the order: RO is issued by the LA or VA; whereas, RTWO is issued by the SOLE.

As to nature: RO is part of a disposition on the merits; whereas, RTWO is interlocutory only.

As to reinstatement wages: If the RO is reversed, the employer shall pay reinstatement wages from date of refusal of the RO to date of reversal of the LA's decision; whereas, if the AJO is mooted, reinstatement wages do not become due.

2. Appointment of LA as VA

1989 Guidelines on the Conduct of Voluntary Arbitration:

In a case where both employer and EBR refuse to submit their dispute to voluntary arbitration (*e.g.*, to the VA named in their CBA), their dispute can still be heard by a VA. The third mode by which the VA acquires jurisdiction is

thru appointment. Hence, if the parties are before the LA already, they can appoint the latter to be their VA.

Note: 2004 Revised Guidelines

Only the NCMB can appoint a VA, *i.e.*, when the parties have not named a VA in their CBA, or when one serves a notice to arbitrate and the other does not reply.

10-Day Appeal Period: Reason

Rule 43, Rules of Court, gives **15 days**; whereas, **Art. 262-A, Labor Code**, gives **10 days**. Under Rule 43, one can file his petition on the 11th day. By then, however, the VA's decision would have attained finality already because, per *Art. 262-A* (Now **Art. 276**), it becomes final and executory unless contested within 10 days. To avoid this problem, substantive law must be given application over procedural law. In both *Phil. Electric Co. v. CA* and *Baronda v. CA*, the appeal period was 10 days.

Update:

Guagua National Colleges v. CA

G.R. No. 188492, 28 August 2018

Both 10 days under Art. 262-A (now Art. 276) and 15 days under Rule 43 shall be observed. The first is the period for filing an MR with the VA; whereas, the second is the period for filing a petition for review with the CA to be reckoned from date of receipt of the order denying the MR.

3. RD – LA - RD

The issue of *res judicata* may be occasioned by the movement of a case from the RD to LA (*via* a referral order for lack of jurisdiction) and back to the RD per order of the SOLE. When returned to the RD, is the case barred by *res judicata* for the reason that the referral order is more than 10 days old? No. A mere referral order is not a judgment on the merits.

4. RD – SOLE - BLR

4.1. The RD resolved a WACLIU case. His decision was appealed to the SOLE. Instead of resolving the appeal, the SOLE transmitted it to the BLR. This was questioned. Allegedly, the SOLE abdicated his appellate power in favor of an inferior body. The SC ruled that there was no such abdication because Art. 226 (old) of the Labor Code vested jurisdiction on the BLR over inter-union and intra-union disputes. The case resolved by the RD was an intra-union dispute; hence, appeal should be taken to the BLR (**Barles v. Bitonio**).

4.2. From the BLR, the **decision rendered on appeal**, shall be elevated to the **CA** and not the SOLE. But if the decision is one rendered by the BLR in an **original FInTCAM case**, the appeal goes up to the **SOLE**, then to the CA.

4.3. **Analogy.** The manner of appealing the RTC's decision is as follows:

4.3.1. By **notice of appeal** if rendered in the exercise of original jurisdiction; and

4.3.2. By **petition for review** if rendered in the exercise of appellate jurisdiction.

Hence, as regards appeals from BLR decisions, the question to ask is: In what capacity did the BLR render the decision?

5. RD – BLR - SOLE

In an appealed WACLIU case, the BLR Director inhibited. As a result, the case was elevated to the SOLE for resolution. This was questioned for lack of jurisdiction. Allegedly, it was only the BLR which could resolve the case. The SC ruled that, in light of the inhibition, the SOLE could resolve the appeal in the exercise of his power of control and supervision over the BLR (**Heritage Hotel**

Manila v. NUWHRAIN-HHMSC, G.R. No. 178296, 12 January 2011).

Clue: The Spageti Doctrine

Do not give this to the examiner. In the first place, the spelling is wrong. In **Barles**, the movement was from SOLE to BLR (**pababa**) and it was held to be valid. In **Heritage**, the movement was from BLR to SOLE (**pataas**) and it was also held to be valid.

Evidence in Labor Proceedings

1. Money Claims

1.1. Labor Standards Claims

1.1.1. Even if non-payment is alleged by an employee (which he is supposed to prove being the one making the allegation), the employer is still required to prove payment. The reason for this is that he has the time sheets and payroll sheets. Thus, being in a better position to enlighten the forum on the circumstances of the claim, he is imposed the burden of evidence.

1.1.2. Regardless, the forum cannot make a just money award unless the employee shows his entitlement to his claim by proving its basis (*e.g.*, his coverage and his compliance with the prerequisites of the mandatory benefit claimed) and by particularizing it (*e.g.*, number of hours overtime by him) in order to help the forum make a mathematical determination of his claim.

1.1.3. Hence, the burden to prove payment comes after burden to prove the claim as a valid credit, both due and demandable.

1.2. Labor Relations Claims

1.2.1 Moral Damages

Art. 2217, New Civil Code, provides that moral damages are awarded when the claimant suffered physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury if they are the proximate cause of the defendant's wrongful act or omission.

In **termination cases**, they are awarded when the dismissal is attended by bad faith, malice or fraud, or when it constitutes an act oppressive to labor, or when it was done in a manner contrary to morals, good customs, or public policy (**San Miguel Properties v. Gubacan**, G.R. No. 153982, 18 July 2011).

1.2.2. Exemplary Damages

They are proper when the dismissal was effected in a wanton, oppressive or malevolent manner, and public policy requires that these acts must be suppressed and discouraged (**Fernando P. De Guzman v. NLRC**, G.R. No. 167701, 12 December 2007).

1.2.3. Attorney's Fees

(a) For **Extraordinary Attorney's Fees (Art. 111, Labor Code)**, the basis for an award is unlawful withholding of salaries and benefits. The 10% has application, based on jurisprudence, beyond the borders of Art. 111. It is also awarded based on an act of illegal dismissal that compels the employee to litigate and, as a consequence, seek legal representation and incur expenses.

(b) For **Ordinary Attorney's Fees**, e.g, 30%, the agreement between lawyer and client

must be submitted; otherwise, labor tribunals cannot speculate as to them.

1.3. **Social Legislation Claims**

1.3.1. The purpose of social legislation is to give and not withhold benefits. Hence, in the event of doubt arising from evidence, it shall be resolved in favour of the member (**Utmost Liberality Rule**).

1.3.2. See **off-premises rules** under Social Legislation, *infra*.

2. **Other Claims**

2.1. Counterclaims

2.1.1. Apply Reasonable Causal Connection Rule

2.1.2. Apply Sole Reference to Labor Law Rule

2.2. Cross-Claims

2.2.1. Apply Reasonable Causal Connection Rule

2.2.2. Apply Sole Reference to Labor Law Rule

Judgment

1. **Valid Judgment v. Erroneous Judgment.** A labor tribunal's judgment, to be valid, must be based on substantial evidence. In addition, the issues must be resolved based on applicable law or doctrine.

2. In **De Roca v. Dabuyan, et al.**, G.R. 215281, 5 March 2018, it was held that the LA's decision was grossly erroneous and unjust; hence, it is a "lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever it exhibits its head." It could not have attained finality; it could not have created rights, nor imposed duties;

and any act performed pursuant to it and any claim emanating from it have no legal effect.

3. **Sec. 14, Art. VIII, Constitution**

The stricture that a decision shall state the facts and law upon which it is based applies to “**decisions**” only, not to orders and resolutions that do not dispose of the case on the merits (**FASAP v. PAL**, G.R. No. 178083, 13 March 2018).

4. **Service on Parties and Counsel**

Note: It is “service on”, not “service “to”. This is all!

5. **Principles**

5.1. **Finality of Judgments**

5.1.1. VA Decisions. They attain finality after 10 (not 15) days if not appealed to the CA.

5.1.2. RD Decisions. They attain finality after 10 days if not appealed to SOLE; and in 5 days if not appealed to the NLRC.

5.1.3. RD Decisions involving apprentices. They attain finality in 5 days if not appealed to the SOLE.

5.2. **Immutability of Final Judgments, Not Violated in the following:**

5.2.1. The VA can issue an alias writ of execution directing payment of separation pay in lieu of reinstatement in view of abolition of positions (**Philex Mining Co. v. Abalos, et al.**)

5.2.2. Backwages and separation pay can be re-computed up to finality of judgment.

5.3. **Harmless Error Rule:** Do not read!

In **FASAP v. PAL**, the Special Third Division (thru J Ynarez-Santiago) decided the case in

2008 in favor of FASAP. The same division denied PAL's 1st MR in 2009. When PAL filed a motion for leave to file a 2nd MR, it was the Regular Third Division (J Corona) which resolved the motion by granting it. At that point, J Ynarez-Santiago had already retired. After J Corona inhibited (because of his prior mediation efforts while still in the Palace), the case was re-raffled to J Velasco of the same Regular Third Division. When J Velasco inhibited, it was re-raffled to J Brion of the same division. Meantime, more justices retired (JJ Chico-Nazario, Nachura and Carpio-Morales) resulting in the re-organization of the divisions by J Corona (a CJ by then). It resulted in the transfer of J Brion to the Second Division. Per SC Internal Rules, a case follows the *ponente*; hence, FASAP v. PAL went to the Second Division. In due time, J Brion denied the 2nd MR.

Before receiving a copy of the J Brion resolution, Atty. Estelito Mendoza wrote the SC Clerk of Court for a case status update. He wrote 4 letters in all thru which he sought information as regards the *ponente*, members who voted, and how they voted – with request to submit his letters to the SC *en banc*. Those letters became an A.M. numbered 11-10-1-SC. *En Banc* resolved the AM by recalling the J Brion resolution and resolved the case (separately docketed) on the merits on 13 March 2018 – with PAL winning.

By way of a rule, a case from a division goes up to the SC *en banc* only by a vote of 3 out of 5 of the members. According to J Sereno, there was no voting that took place. But the decision penned by J Bersamin says the Second Division requested the CJ to elevate the case to

the Banc. By way of a rule too, when a member retires, he/she should be replaced from the membership of the other divisions. Hence, J Ynarez-Santiago should have been replaced and FASAP v. PAL should have remained with the Special Third Division. As to why it went to the Regular Third Division, there is no explanation. What Administrator Marquez confessed was it was error for the SC to move the case from the Regular Third Division to the Second Division. Actually, that was not an error. It was based on the established rule that a case follows the *ponente*. The error was the movement of the case from Special Third Division to Regular Third Division. At any rate, whatever error was committed was a harmless error, *i.e.*, according to the *en banc*.

Advice:

You should pass the Bar this year to avoid having to read, and bringing to the examination room, controversial decisions.

5.4. Appellate Strategy: Do not read!

5.4.1. Atty. Mendoza filed 2 MRs: (a) the first was a 2nd MR which was accompanied by his motion for leave to file it; and (b) the second was his MR on the resolution denying PAL's 1st MR. Since those MRs ultimately sought reversal of the 2008 decision of J Ynarez-Santiago, PAL had filed 3 MRs in all. But Atty. Mendoza was Atty. Mendoza. If it was Atty. Baringkukurong filing a 2nd MR, his pleading would not have seen the light of day. What is the moral lesson? None! Legal, there is.

5.4.2. **J Leonen's Strong Objection**

The 2nd MR was a prohibited pleading; hence, it did not prevent the 2008 decision of J Ynarez-Santiago from attaining finality. “Only Jesus Christ can raise the dead. Padre Faura, who is just a friar, cannot!!!” These are not J Leonen’s words. Do not memorize.

Appeal

UPDATE: Recent jurisprudence continues to affirm the St. Martin Funeral Home doctrine. Decisions of labor tribunals and appellate labor bodies remain reviewable via Rule 65 certiorari, not appeal, absent a specific statutory mode of review.

1. Court of Appeals (CA)

1.1. Powers over Labor Cases

1.1.1. Certiorari Power (Rule 65, Rules of Court)

Subject: Decisions of labor appellate bodies.

1.1.2. Review Power (Rule 43, Rules of Court)

Subject: Decisions of VA or PVA

NYK-FIL Ship Management, Inc. v. Gener G. Dabu

G.R. No. 225142, 13 September 2017

Sec. 4, Rule 43, Rules of Court, fixes appeal period at 15 days. On the contrary, **Art. 262-A, Labor Code**, provides that the VA’s decision shall attain finality if not challenged in **10 days**.

Art. 262-A (now Art.276) should be applied for two reasons:

(a) An absurd situation will obtain when the VA's decision is appealed on the 11th – 15th day from receipt thereof as allowed by Sec. 4, Rule 43, Rules of Court, but which decision, by force of Art. 262-A, has already become final and executory; and

(b) The 10-day appeal period under Art. 262-A is a substantive right. Therefore, Sec. 5(5), Art. VIII of the Constitution — which does not permit the SC to promulgate rules that will diminish, increase or modify substantive rights — will be violated if Sec. 4, Rule 43 of the Rules of Court were applied.

1.2. **Motion for Reconsideration**

Reason: Certiorari is an extraordinary remedy available when there is no appeal nor any plain, speedy and adequate (PSA) remedy in the ordinary course of law. While NLRC decisions are not appealable (first condition met), an MR is a PSA remedy (**Jennifer Abraham v. NLRC**, G.R. No. 143823, 6 March 2001). Hence, one should be filed before elevating the case to the CA *via* Rule 65.

1.3. **Exceptions**

Prior MR is not required in the following: (**No MR, QUINIE**)

- 1.3.1. Pure **questions of law** are sought to be resolved;
- 1.3.2. Under the circumstances, an MR would be **useless**;
- 1.3.3. Public **interest** is involved;
- 1.3.4. The proceedings in the lower court are a **nullity** for lack of due process;
- 1.3.5. The **issues** raised under Rule 65 have been duly raised and passed upon by the

NLRC, or are the same as those raised and passed upon by it;

- 1.3.6. Petitioner was deprived of due process and there is **extreme urgency** for relief;

Hypothetical Question

Texas Instruments (TI) prevailed over Larry before the LA, prompting Larry to appeal the finding of no constructive dismissal to the NLRC. The NLRC reversed the LA, prompting TI to file its MR. The NLRC reversed itself, prompting Larry to file his own MR. The NLRC reversed itself again, prompting TI to file a petition for certiorari. Larry moved to dismiss its petition on the ground that it did not seek reconsideration of the NLRC's last resolution first. Decide (2.5%).

Answer

It would be futile to go back to the NLRC on MR considering that it had two opportunities to correct or rectify its error, *i.e.*, upon the same issue of constructive dismissal. In this case, the filing of an MR is excused; hence, TI's petition should be given due course.

Genpact Services, Inc. v. Santos-Falceso, et al.
G.R. No. 227695, 31 July 2017

Question

The LA rendered judgment dismissing Emplo Yee's complaint for illegal dismissal. His decision was affirmed by the NLRC, prompting him to file an MR. In its resolution partially granting the MR by awarding separation pay, the NLRC said: "No further motion of similar import shall be entertained." Emplo Yer filed a petition for certiorari which the CA dismissed on the ground that Emplo Yer did not file an MR first. Did the CA know what it was doing?

Answer

No. According to J Perlas-Bernabe, the portion in the NLRC's resolution "No further motion of similar import shall be entertained" meant that it was useless to file an MR because it would not be entertained anyway. (See item 2, Exceptions to MR, *supra*).

Comment:

Perhaps the CA knew what it was doing. The MR resolved was Empl Yee's MR. Hence, the warning was directed at him, *i.e.*, if minded to ask for backwages upon a new finding of illegal dismissal, he should ask for that from the CA. The NLRC would not give him that on re-reconsideration. As to Empl Yer, he should have filed an MR because the warning was not directed at him. By accident, the CA knew what it was doing – as if it predicted FASAP v. PAL, 13 March 2018. The MR resolved was Empl Yee's MR. Hence, the warning was directed at him, *i.e.*, if minded to ask for backwages upon a new finding of illegal dismissal, he should ask for that from the CA. The NLRC would not give him that on re-reconsideration. As to Empl Yer, he could file an MR on the resolution of Empl Yee's MR. Atty. Estelito Mendoza, in FASAP v. PAL, filed 2 MRs with the SC. The first was a second MR (with leave of court) for the reversal of the 2008 decision of J Ynarez-Santiago. The second was a first MR on the 2009 resolution denying PAL's first MR. Based on this, Empl Yer could MR the resolution of Empl Yee's MR. If the examiner will give Genpact, he will have a problem with FASAP v. PAL. The case may be outside the 2018 Bar cut-off date but, by the time the UP Law Center will suggest answers, it will have been digested and fully analyzed it already. Therefore, he should avoid giving Genpact for his own good; otherwise, he would be booed by you during your oath-taking ceremony.

1.4. Requisites of Certiorari

PALEA v. Hon. Cacdac

G.R. No. 155097, 27 September 2010

Clue: TiBO: No Appeal, No PSA Remedy

1.4.1. Respondent is a tribunal, board, or officer (**TBO**) exercising judicial or quasi-judicial powers;

1.4.2. There is no appeal nor any plain, speedy or adequate (**PSA**) remedy in the ordinary course of law.

Note:

1. The Labor Code provides for no system of appeals after the SOLE, NLRC and BLR render decisions in the exercise of their review powers (No appeal). A motion for reconsideration, however, is a PSA remedy (**Jennifer Abraham v. NLRC**, G.R. No. 143823, 6 March 2001).

2. Not Quasi-Judicial Bodies

(a) DOLE-RD when implementing a final BLR decision to conduct a general election (**PALEA, supra.**). Incidental orders of RD are not in the exercise of quasi-judicial power.

(b) A mere task force (**Rivera v. Espiritu**, G.R. No. 135547, 23 January 2002). However, the SC allowed the petition because air transportation was of public interest.

(c) The NCMB is not a quasi-judicial body.

3. **Certified photo copies** are the same as certified true copies. They are presumed, based on the certification of the certifying officer, as faithful reproductions of the original copies on file (**Doble v. ABB, Inc.**, G.R. No. 215627, 5 June 2017).

1.5. Grave Abuse of Discretion

Grave abuse of discretion is the whimsical and capricious exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility (**Cuison v. CA**, G.R No. 128540, 15 April 1998).

1.6. **Error of Jurisdiction**

The CA, sitting as a Rule 65 court, can only correct error of jurisdiction, *i.e.*, grave abuse of appellate power. Thus, save in the exercise of its **Equity Jurisdiction (EJ)**, it cannot review the evidence.

1.7. **Equity Jurisdiction**

CA, as a Rule 65 court, cannot review the evidence and correct errors of judgment. As an exception to this rule, if the factual findings of the appellate body are opposed to those of the first level administrative bodies, it is allowed to determine which the correct finding is in the exercise of equity jurisdiction (Rf: **Luna v. Allado Construction Co. et al.**, G.R. No. 175251, 30 May 2011).

1.8. **CA Functions**

1.8.1. As a Rule 65 Court, it corrects error of jurisdiction (of NLRC, SOLE, BLR).

1.8.2. As Rule a 43 Court, it corrects error of judgment (of VA).

Distinctions:

(a) Under Rule 65, MR is mandatory (unless excused, *supra*); whereas, under Rule 43, it is optional.

(b) Under Rule 65, prescriptive period is 60 days; whereas, under Rule 43 it is 10 (for labor cases decided by the VA).

Note: Appeal of VA decision is to the CA *via* Rule 43 and not Rule 65 even if grave abuse of discretion is ascribed to the VA (**Baronda v. CA**, *supra*)

1.9. Dual Function of Appellate Courts

1.9.1. Review for Correctness Function

In simple terms, a case must be correctly decided as to prevent a re-litigation of the same issues between the same parties. Hence, the objective of the first function is *res judicata*.

1.9.2. Institutional Function

Decisions must have predictability. Cases, involving the same or substantially the same facts and issues, must be similarly resolved. Hence, the objective of the second function is *stare decisis*.

Note:

As a case goes higher up the review ladder, institutional function increases (**Fabiana v. CA J Reyes, et al.**, A.M. No. CA-13-51-J, 2 July 2013).

2. Supreme Court

2.1. From CA to SC, the mode of review is thru a petition for review on certiorari (Rule 45), not Rule 65 because there is an appeal (Rule 45 is a mode of appeal).

2.2. If grave abuse of certiorari power is raised, Rule 65 is available (**Tomas Claudio Memorial College, Inc. v. CA**, G.R. No. 152568, 16 February 2007).

Update: Even if grave abuse of discretion is alleged, the remedy must be petition for review on certiorari under Rule 45 (**Wenceslao, et al. v. Makati Dev't Corp.**, G.R. No. 230696, 30 August 2017).

2.3. **FASAP v. PAL**, G.R. No. 178083, 13 March 2018
(Residual Power, Harmless Error Rule)

The 2018 FASAP v. PAL Case
PADRE FAURA RAISES LAZARUS FROM THE DEAD
(Fake News?)

PAL retrenched FASAP members in 1998 on the ground of serious business losses. The dismissal was contested. The LA found for FASAP. On appeal, the NLRC reversed the LA. FASAP went up to the CA which favored PAL. It declared the retrenchment as valid based on findings of serious business losses (*sans* financial statements). In 2008, the SPECIAL THIRD DIVISION (composed of JJ Ynarez-Santiago, Bersamin, Peralta, Nachura and Chico-Nazario) reversed the CA and declared that the complaining FASAP members had been illegally dismissed based on lack of audited financial statements. The *ponente* was J Ynarez-Santiago.

PAL filed an MR which J Ynarez-Santiago denied WITH FINALITY thru her 2009 Resolution (FIRST RESOLUTION). PAL filed a motion for leave to file a second MR. Since J Ynarez-Santiago had already retired, J Corona (member of the regular THIRD DIVISION) granted the motion for leave and then inhibited due to his prior mediation efforts while still with the Palace. Thereafter, the case was re-raffled to J Velasco of the regular THIRD DIVISION. However, J Velasco inhibited for a valid reason. Hence, the case was re-raffled to co-member J Brion. Later, J Brion became a member of the SECOND DIVISION by reason of the re-organization of the SC divisions by J Corona (now CJ) occasioned by the retirement of JJ Ynarez-Santiago, Nachura, Morales and Chico-Nazario. Per internal rules, the case followed the *ponente*, J Brion. Eventually, J Brion denied PAL's second MR thru his 2011 resolution (SECOND RESOLUTION).

In the interim, Atty. Estelito Mendoza wrote 4 letters to the SC Clerk of Court, Atty. Vidal. He wanted an update on the case, asking for details, *viz.*, who the *ponente* and members were, and how they voted.

During an *en banc* session, CJ Corona explained that the Mendoza letters (J Sereno claims that the entire membership of the SC was not shown copies of the letters) were creating a big problem for the SC; hence, he suggested that the SECOND RESOLUTION be recalled and that the *en banc* resolve the issues raised by Atty. Estelito Mendoza in his letters. Hence, J Brion's SECOND RESOLUTION was recalled thru the 4 October 2011 RECALL RESOLUTION, (which was without facts and law) in A.M. 11-10-1-SC (the Mendoza letters were treated as A.M. and assigned this docket number). Eventually, FASAP v. PAL was decided by the SC *en banc* which ruled by a vote of 7-2 that the retrenchment was valid as found by both NLRC and CA. It also held that FASAP could not participate in the determination of the selection criteria employed by PAL.

J Leonen's Objection

PAL'S second MR, being a prohibited pleading, did not stop the 2008 decision from attaining finality. J Corona granted the motion for leave to file a second MR but **did not state** that the decision of J Ynarez-Santiago has not attained finality. So it attained finality. In re-opening the case, the dead was resurrected. Meantime, J Sereno (on leave) claims that the SECOND DIVISION did not elevate FASAP v. PAL to the *en banc* by 3/5 vote. Nor were the Mendoza letters disclosed to all members of the Court as to intelligently act on the matter.

The Majority's Justification

1. Sec. 14, Art. VIII of the Constitution – which requires that decisions state the acts and law upon which they are based – applies only to decisions and not to mere

resolutions. Even Sec. 1, Rule 36 of the Rules of Court, which implements the constitutional provision, applies to judgments only. These provisions do not apply to mere recall resolutions which do not dispose of a case on the merits. It was within the power of the SC to see to it that the SECOND DIVISION was clothed with the property authority to issue the SECOND RESOLUTION.

2. The members of the SECOND DIVISION (Ruling Division) went to the CJ to recommend the recall in clear and unequivocal terms. This was omitted in the RECALL RESOLUTION in observance of the prohibition against public disclosure of internal deliberations of the SC.

3. The raffle of the case to the SECOND DIVISION was in accordance with Sec. 4(3), Art VIII of the Constitution and that any error committed was a harmless error that did not invalidate prior rulings made.

4. The participation of CJ Corona did not void the RECALL RESOLUTION (note that he inhibited earlier). He could not have resolved the case by himself because the SC, whether acting *en banc* or thru a division, acts as a collegial body.

5. Thru its 13 March Resolution, the SC upheld the validity of its RECALL RESOLUTION and ruled that the case be raffled to either J Peralta or J Bersamin, being the remaining members of the SPECIAL THIRD DIVISION, to become Member-in-Charge. Hence FASAP's MR to void the RECALL RESOLUTION must be denied.

6. PAL's second MR was not a prohibited pleading. As an exception to Sec 2, Rule 52, Rules of Court, the IRSC allows second MRs under these conditions: (a) to serve the higher interest of justice, *i.e.*, the decision is not only legally erroneous, but patently unjust and potentially capable of causing unwarranted and irremediable injury or damage; (b) the second MR is filed before finality of judgment; and (c) if the decision was rendered by a

division, at least 3 members must vote to elevate the case to the *en banc*; or, if by the *en banc*, 2/3 of the *en banc* must vote to allow the second MR.

7. The 2008 decision penned by J Ynarez-Santiago contravened jurisprudence recognizing the precarious financial condition of PAL, the findings of the LA (?), NLRC and CA, as well as SEC, regarding the business losses of PAL. It was merely based on the lack of audited financial statements.

8. With the granting of PAL's motion for leave to file second MR, the 2008 decision has not attained finality yet.

Matters Not Raised on Appeal

1. **Rule:** Issues not brought on appeal are beyond review.

2. **Exceptions:**

Javines v. Xlibris aka Author Solutions, Inc. G.R. No. 214301, 7 June 2017

2.1. Questions affecting jurisdiction over the subject matter;

2.2. Matters evidently plain or clerical errors within contemplation of law;

2.3. Matters necessary in arriving at a just decision and complete resolution of the case, or necessary in avoiding piecemeal justice;

2.4. Matters on record not entertained by the court, or which the parties failed to raise;

2.5. Matters closely related to the assigned error;

2.6. Matters upon which the determination of a question properly assigned is dependent.

Post-Judgment Remedies

1. In **St. Martin Funeral Home v. NLRC**, G.R. No. 130866, 16 September 1998, the Supreme Court stated that the **mode of review** of NLRC decisions is a petition for certiorari under **Rule 65, Rules of Court**. Since the remedy is not a mode of appeal really, as it is actually a **special civil action** with the NLRC as respondent, it follows that the NLRC's decisions are final and non-appealable in the strict sense of the term. Thus, the following remedies taken after finality thereof may be regarded as **post-judgment remedies**:

1.1. Petition for Certiorari (Rule 65, Rules of Court);

1.2. Motion to Lift Entry of Judgment (Sec. 5, Rule XI, 2011 NLRC Rules);

1.3. Motion to Quash Writ of Execution (Sec. 13, Rule XI, *id.*); and

1.4. Petition for Extraordinary Remedies (Rule XII, *id.*)

2. Guidelines

2.1. Petition for Extraordinary Remedies (Rule XII)

2.1.1. Requisites

(a) Accompanied by clear original or certified true copy of the order or resolution assailed, together with clear copies of documents relevant or related to the said order or resolution;

(b) Must bear the arbitral docket number and appeal docket number, if any;

(c) Must state material dates to show timeliness of the petition;

(d) Must be verified by the petitioner himself/herself;

(e) In the form of a memorandum, stating the grounds relied upon and relief/s prayed for;

(f) Three (3) legibly written or printed copies; and

(g) Accompanied by:

(i) certificate of non-froum shopping;

(ii) proof of service upon the other party/ies and Labor Arbiter who issued the order or resolution; and

(iii) proof of payment of the required fees.

2.1.2. **Grounds (Sec. 2)**

(a) Pure questions of law;

(b) Serious errors in findings of fact;

(c) FAME resulting in failure to appeal;

(d) The order or resolution will cause injustice if not rectified.

2.2. **Rule 65 v. Rule XII**

As to Grounds: Rule 65 is limited to grave abuse of discretion, or error of jurisdiction; whereas, Rule XII is not. It includes these additional grounds: pure questions of law; serious errors in findings of

fact; FAME resulting in failure to appeal; the order or resolution will cause injustice if not rectified (Sec. 2).

Note: As to serious errors in the findings of fact, Rule XII does not substitute for an appeal under Art. 229. This is why there is a need to emphasize that a Rule XII petition is a post-judgment remedy and not a mode of appeal.

As to Prescription: A Rule 65 petition must be filed within 60 days; whereas, a Rule XII petition must be filed within 10 days.

As to Respondent/s: Under Rule 65, the respondent is the NLRC; whereas, under Rule XII, the LA is a nominal respondent. The LA is not allowed to file comment or appear.

2.3. **Effects of Post-Judgment Remedies on Execution**

2.3.1. **Sec. 4, Rule XI, 2011 NLRC Rules of Procedure, as amended.**

Mere filing of a petition for certiorari will not stay execution, unless a TRO is issued enjoining execution.

Note: Sec. 7, Rule 65, Rules of Court, grants the lower courts 10 days to enforce final judgments under pain of administrative sanction.

2.3.2. **Sec. 13, Rule XI, 2011 NLRC Rules of Procedure, as amended.**

Mere filing of a motion to quash writ of execution will not stay execution.

2.3.3. **Sec. 9, Rule XII, 2011 NLRC Rules of Procedure, as amended.**

Mere filing of a Rule XII petition will not stay execution, unless a TRO is issued.

Execution of Judgment

UPDATE: Under the 2025 NLRC Rules, issuance of a writ of execution upon finality is ministerial. Writs may be enforced nationwide, and uncontested portions of judgments may be executed notwithstanding the pendency of review as to other aspects.

1. Pre-Execution Conference

1.1. Compromise

The parties can always enter into a compromise settlement agreement at this stage. The requisites of a valid settlement are: (a) reasonable and fair; and (b) adequate consideration. In **Catholic Vicariate of Baguio v. Sec. Sto. Tomas**, *supra*, 50% consideration was considered as unconscionable.

1.2. Recomputation of Backwages and Separation Pay

The **Principle of Finality of Judgments** is not violated when backwages and separation pay are recomputed until finality of judgment. In **Session Delights**, from which **Gallery Frames** took its bearing, it was held that finality of a judgment puts to rest all the issues of a case – except as to amount of backwages. In other words, where no reinstatement takes effect, backwages continue to accrue until finality of judgment (**Gaco v. NLRC**); hence, the computation of the LA, NLRC or CA, as the case may be, must be adjusted until the date of finality stated in the entry of judgment.

Even separation pay, computed as of date of the LA's decision, NLRC's decision, or CA's decision – as the case may be – shall be recomputed up to finality of judgment.

1.3. Legal Interest

Backwages will continue to accrue until finality of judgment only. After finality, legal interest will accrue if the employer does not satisfy the judgment. Starting 1 July 2013, legal interest shall be 6% per annum. Before then, it was 12%.

2. Writ of Execution

2.1. Motion to Quash

A motion to quash, to be filed within 10 days from receipt of the writ of execution, shall be resolved in 10 days from filing.

2.2. No Appeal

If the motion to quash is denied, the employer cannot appeal anymore unlike before. His remedy is to challenge the order denying his motion under Rule XII.

3. Order of Execution

3.1. Cash bond

3.2. Bank deposits

3.3. Surety bond

3.4. Personal property

3.5. Real property

4. Conditional Settlement of Judgment: Effect on Certiorari Petition

4.1. Magsaysay Maritime Corp. v. De Jesus, G.R. No. 203943, 30 August 2017

The conditional satisfaction of judgment provided that should the respondent be able to get a reversal, the complainant could not avail of any legal remedies. This was held to be prejudicial to the latter; hence, it was void. Being void, the petition for certiorari was mooted.

4.2. Transmarine Carriers v. Legaspi, 710 Phil. 838, 2013

The conditional satisfaction of judgment was highly prejudicial to the claimant because while the employer could file a petition for certiorari and other cases, the claimant could not. Hence, it was void.

4.3. Leonis Navigation v. Villamater, 628 Phil. 81, 2010

The decision was enforced pending respondents' petition for certiorari. An order was issued by the LA closing and terminating the case. The respondents did not question that order. Regardless, the complainant was not allowed to rely on that order to frustrate restitution because the Acknowledgment Receipt she signed when she received the amount was without prejudice to the final outcome of the petition for certiorari.

4.4. Career Philippines Ship Management v. Madjus, 650 Phil. 157, 2010

The conditional satisfaction of judgment mooted the petition for certiorari. It was held to be valid. The complainant waived all past, present and future rights, with undertaking not to file suit anywhere.

Conclusion:

If the conditional satisfaction of judgment is **void**, it will **moot** the petition for certiorari.

Restitution (Rule XI, 2011 NLRC Rules of Procedure, as amended).

1. Sec. 18

“Where the executed judgment is totally or partially reversed or nullified by the Court of Appeals

or the Supreme Court with finality and **restitution is so ordered**, the Labor Arbiter shall, on motion, issue such order of restitution of the executed award, except reinstatement wages paid pending appeal.”

Even if not ordered, restitution must be allowed as common sense dictates; otherwise, the employee would be enriched at the expense of his employer **(2015 Wallem Ruling)**.

Revival of Judgment

Within 5 years from date of finality, judgments shall be enforced by motion for issuance of writs of execution. Thereafter, it shall be by revival.

**Zamboanga Barter Traders Kilusang Bayan, Inc.
(ZBTKBI) v. Hon. Julius Rhett J. Plagata, et al.,
G.R. No. 148433, 30 September 2008**

ZBTKBI donated a parcel of land to the Republic (represented by the Commanding Officer of the Philippine Constabulary) on condition, among others, that the latter would build a 1,000-stall barter trade market building on it, and that should barter trading be phased out, prohibited, or suspended for more than 1 year then the property shall be reverted. Hence, TCT NO. 66696 was issued to the donee. Prior to the donation and the construction of the building, ZBTKBI hired Mendoza as clerk. Dismissed for abandoning his work, he sued for illegal dismissal and won a monetary award. The NLRC dismissed ZBTKBI's appeal. Having failed to elevate the case to the certiorari court, a writ of execution was issued but it was returned unsatisfied. In his report, the sheriff stated that the corporate president told him to tell the LA to send him (sheriff) to the barter trade “clad in an iron shirt”. Thereafter, an alias writ of execution was issued against the Commanding Officer of the Philippine Constabulary, as representative of the

Republic. Subsequently, barter trading in Zamboanga was totally phased out by the President.

A second alias writ was issued authorizing the levy of any interest ZBTKBI had over the land and its improvements. Eventually, the land was auctioned off with Mendoza as the highest bidder. As it turned out, ZBTKBI failed to redeem it. Hence, Mendoza who was issued a certificate of sale was eventually issued a writ of possession. ZBTKBI filed a motion for reconsideration but it was denied. Resultantly, it filed a petition for certiorari. Allegedly, the owner of the land was the Republic which had no notice of the suit. Besides, the over-levy took place after 5 years from finality of judgment. The CA dismissed the petition, ruling that the property had already reverted to ZBTKBI. It ruled that, based on the documents, it was the owner; hence, the Republic did not have to be notified. And as to the allegedly shocking bid, it ruled that it was even advantageous to ZBTKBI because it allowed it to redeem the property at a low price. After the CA denied its MR, it went up to the SC which dismissed its petition for review on certiorari for lack of merit.

Before the SC, Y Trading Center Stallholders filed a motion for intervention with MR, praying that the levy and sale be voided and that Mendoza's title be cancelled. It prayed that it be allowed to pay the judgment award, plus legal interest.

During a congressional investigation, the LA admitted having violated the Rules of Court and the Labor Code when he ordered execution of judgment by mere motion after 5 years. His testimony was submitted by the intervenor to the SC as supporting evidence. Meantime, a separate cancellation case was filed with the RTC. That was manifested to the SC.

Required to file comment since government property was involved, the OSG submitted that the CA erred in not passing upon the issue of nullity of the levy which was

made without notice to the Republic. Thus, it erred in ruling that the property had reverted; in upholding the auction sale, certificate of sale, and writ of possession; in not voiding the levy on the ground that it was an over-levy; and in not ruling that the judgment could not be executed by mere motion after 5 years.

The SC ruled that the property automatically reverted without need for rescission because the President had totally phased out barter trade in Zamboanga; however, what reverted was the land and not the 5M worth of government improvements. As to the 5-year period, Mendoza was able to move for execution within 5 years. If there was delay in the levy, it was because the corporate President warned that the sheriff should be clad in iron shirt if dispatched to enforce the judgment. Hence, Mendoza was not required to file an independent action.

What is the moral lesson?

None, except to remark – and it bears doing so - that the corporate president was a lawyer who was very inclined to apply the **Iron Shirt Doctrine** (do not use this in the Bar).

Piercing the Veil of Corporate Fiction

1. Piercing the veil of corporate fiction is a means to determine liability, not to acquire jurisdiction.

Kukan International Corp. v. Hon. Amore Reyes, et al.

G.R. No. 182729, 29 September 2010

A corporation must be co-impleaded from the start before it can be subjected to the piercing processes of the trial court. **Piercing the veil of corporate fiction is a means to determine liability, not to acquire jurisdiction.** The grounds for piercing are to be proven during a full-blown trial. A third party claim questioning the propriety

of the piercing, thru a special and involuntary appearance, is subsumed to a challenge to jurisdiction; hence, the third party-movant does not submit to the jurisdiction of the court thereby.

1.1. Hypothetical Problems

1.1.1. Ricardo sued Jolibee for illegal dismissal. The LA rendered a decision ordering his immediate reinstatement and payment of his full backwages. The NLRC affirmed the decision, which also earned approval from the CA and the SC. In the LA's eventual writ of execution, Jolicee and Jolidee were included based on his determination that both were adjuncts or instrumentalities being used by Jolibee as in-house manpower suppliers to circumvent the law on tenure. He denied their separate motions to quash writ which were based on alleged lack of jurisdiction since both movants were not impleaded in the case. Decide (2.5%).

1.1.2. The LA issued an alias writ of execution, this time including ABC Corp. which is not a party to the case, based on public knowledge that the taxi cabs sporting the name Aircon – one of which was being driven by the complainant - are actually owned by ABC Corp. In said writ, he pierced the corporate veil separating the legal personality of said company from that of respondent company XYZ Corp. Resolve. (2.5%)

1.2. Proposed Answers

1.2.1. The piercing of the corporate veils separating the three corporations is void. As a requirement of due process, Jolicee and Jolidee should have been impleaded in the same case against Jolibee. Piercing is a process that takes place during trial at which the grounds are es-

established, *i.e.*, after the court has acquired jurisdiction over all corporations concerned. (Kukan).

1.2.2. Public knowledge cannot substitute for evidence. Appearance evidence, or surface evidence, is not substantial evidence at all. Moreover, corporate veil cannot be pierced in a writ of execution but in the decision that resolves the issues of the case. Since ABC Corp. was not impleaded, jurisdiction has not been acquired over its person. Hence, no issue could have been validly resolved as against it.

2. Theories on Piercing or Grounds for Piercing

2.1. Fraud Theory

2.2. Alter Ego Theory

3. Impleading of Parties During Execution

Dutch Movers, Inc., et al. v. Edilberto Lequin, et al.

G.R. No. 210032, 25 April 2017

J Castillo

(MCLE Notes of Dean Nilo T. Divina)

Piercing the veil of corporate fiction is allowed, and responsible persons may be impleaded and be held solidarily liable even after final judgment and on execution, provided that such persons **deliberately used the corporate vehicle to unjustly evade the judgment obligation, or resorted to fraud, bad faith, or malice in evading their obligation.**

4. Reverse Piercing Action

4.1. **Concept.** In a reverse piercing action, the assets of a corporation are made to satisfy claims against a corporate insider.

4.2. Types

**International Academy of Management and
Economics v. Litton and Co., Inc.**

G.R. No. 191525, 13 December 2017
(MCLE Notes of Dean Nilo T. Divina)

4.2.1. **Outsider Reverse Piercing.** It contemplates a situation wherein a party with a claim against an individual or corporation attempts to be repaid with assets of a corporation owned or substantially controlled by the defendant.

4.2.2. **Insider Reverse Piercing.** The controlling members attempt to ignore corporate fiction in order to take advantage of a benefit available to the corporation, such as an interest in a lawsuit or protection of personal assets.