Labor Market Regulation via Trade Union Combinations and Multi-Employer Bargaining: Context, Processes and Outcomes in the Philippines

by

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University of the Philippines
Outline

• Introduction
• Context
• Processes of trade union combinations and multi-employer bargaining
• Outcomes
• Conclusion
Introduction

• On March 15, 2003, the rules implementing the Philippine law on labor relations – Department of Labor and Employment (DoLE) Department Order (DO) No. 40-03, Series of 2003, became effective.

• Two interesting innovations under DO No. 40-03 – trade union mergers and consolidations and multi-employer bargaining

• This study takes a closer look at the context, processes and outcomes of trade union combinations and multi-employer bargaining in the Philippines.
Introduction

• What institutions helped shape these rules on trade union combinations and multi-employer bargaining? What are the processes involved? What are the outcomes? To what extent have the aims of the rules been achieved, if at all? Have more centralized bargaining structures emerged? Do conceptualizations of work matter (Budd 2011)?
Context: Nexus of bargaining structure, coverage and trade union density in general

Figure 1
RELATION OF CENTRALIZATION OF STRUCTURE TO LEVEL OF BARGAINING

Source:

Thomson (1981)
Context: Nexus of bargaining structure, coverage and trade union density in general

![Graph showing voice regulation and representational security in Asia and the Pacific](image)

Source:

ILO (2000)
Context: Nexus of bargaining structure, coverage and trade union density in general

Figure 2.2
VOICE REGULATION AND REPRESENTATIONAL SECURITY

Africa

Representational Security

Collective Bargaining Coverage %

Kenya
Zambia
Swaziland
Uganda
Zimbabwe

South Africa

Voice Regulation

Trade Union Density %

Source:

ILO (2000)
Context: Nexus of bargaining structure, coverage and trade union density in general

Figure 2.3
VOICE REGULATION AND REPRESENTATIONAL SECURITY

Source:

ILO (2000)
Context: Nexus of bargaining structure, coverage and trade union density in general

Figure 2.4
VOICE REGULATION AND REPRESENTATIONAL SECURITY

Europe

Representational Security

Collective Bargaining Coverage %

Voice Regulation

Trade Union Density %

Source:

ILO (2000)
Context: Institutions that helped shape the rules on trade union combinations and multi-employer bargaining in the Philippines

• Why did these rules emerge in 2003?

• These rules emerged chiefly because of
  - failure of institutions
  - incompleteness of statute
  - administrative action via regulation
Failure of institutions

• Labor organizations and collective bargaining are key institutions in Philippine industrial relations.
• Recognized and protected by public policy, yet they have been declining, and thus failing, over time.
Failure of institutions

Prior to issuance of rules:

• Growth of services sector
• Increase in non-regular, temporary and peripheral workers
• Increase in number of establishments resorting to permanent closure/retrenchment due to economic reasons
• Number of displaced workers went up
• As to labor turnover, separation rate was higher than accession rate
• Number of unions registered went down
• Membership in newly registered unions declined
• Number of CBAs registered decreased
• Number of workers covered by new CBAs fell
Incompleteness of statute

Another reason why the rules on trade union combinations and multi-employer bargaining emerged is the incompleteness of statute – the 1974 Philippine Labor Code (Presidential Decree No. 442, as amended). The Philippine Labor Code does not have provisions on trade union combinations (mergers/consolidations) and multi-employer bargaining.
Incompleteness of statute

Pistor and Xu (2003) –

• Because law is incomplete and cannot cover every situation, institutions exist to handle residual law-making and enforcement, i.e., courts and regulations.

• Courts tend to be reactive, while regulators may be proactive.

• Different factors may affect how governments rely on courts or regulators for residual law-making and enforcement, e.g., legal origins (whether a country is of common law origin or of civil law origin), existing institutions for residual law-making and enforcement, experience of other countries, economic context, etc.
Administrative action via regulation

- The legal system of the Philippines is characterized as a hybrid, having elements of both Spanish civil law and American common law due to the country’s colonial experience. Civil law systems are based on fixed codes or rules while common law systems rely on judicial decisions and precedents. (Sale 2011)
- The issuance of DO No. 40-03 by DoLE is characteristic of the civil law tradition’s focus on rules and regulations setting.
Administrative action via regulation

• The experience of other countries and the economic context as discussed above also influenced in some way the introduction of trade union combinations and multi-employer bargaining in 2003 through DO No. 40-03.
Processes of trade union combinations under DO No. 40-03

• Merger:
  \[ A + B = A \text{ or } B \]

• Consolidation:
  \[ A + B = C \]
Processes of trade union combinations under DO No. 40-03

1. Notice of merger or consolidation (with required documents)

2. DoLE Regional Office (for independent unions, locals or chapters)
   or
   BLR (for labor federations)

3. Certificate of registration issued (bearing registration number of one of merging or consolidating entities as agreed upon)
Processes of multi-employer bargaining under DO No. 40-03

• The legitimate labor unions who desire to bargain with multi-employers shall send a written notice to each employer concerned.

• Employers who agree to group themselves or use their existing associations to engage in multi-employer bargaining shall send a written notice to each of their counterpart legitimate labor unions indicating their desire to engage in multi-employer bargaining.

• Negotiations may commence only with respect to employers and labor unions that consent to participate in multi-employer bargaining.
Outcomes: Less unions and bargaining and fewer workers covered by bargaining

• Thus far, there are no reported cases of trade union merger or consolidation and multi-employer bargaining in the Philippines.

• The quantitative, aggregate data sets of BLES in the Current Labor Statistics, which is a quarterly DoLE publication, do not even mention trade union merger or consolidation and multi-employer bargaining.

• The numbers for union and CBA registration as well as workers covered by CBAs have continued to decrease over time.
Outcomes: Less unions and bargaining and fewer workers covered by bargaining

• Across regions in the country, only the National Capital Region has shown somewhat moderate numbers in terms of union and CBA registration and CBA coverage.

• These are ascertainable from the Tables that follow.
Outcomes: Less unions and bargaining and fewer workers covered by bargaining

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<th>INDICATOR</th>
<th>2011</th>
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Notes: 1. Details may not add up to totals due to rounding.
2. Existing federations/labor centers' membership are already included in existing private sector unions.
p Preliminary.
a Adjusted due to inventory.

BLES (2015)
Outcomes: Less unions and bargaining and fewer workers covered by bargaining

### TABLE 57 - Existing Workers' Organizations and Collective Bargaining Agreements, Philippines: 2011 - June 2013 (Continued)

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<th>INDICATOR</th>
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<td>1,038</td>
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</table>

| Collective Bargaining Agreements (CBAs) | | | | | | | | | | | |
| CBAs Registered | 475 | 365 | 83 | 93 | 85 | 104 | 204 | 97 | 28 | 57 | 22 |
| Workers Covered by New CBAs | 77,944 | 58,138 | 17,472 | 13,018 | 15,368 | 12,280 | 29,405 | 15,265 | 3,925 | 8,128 | 2,087 |
| Expired CBAs | 507 | 432 | 108 | 136 | 87 | 101 | 174 | 86 | 18 | 36 | 34 |
| Existing CBAs (as of) | 1,389 | 1,327 | 1,369 | 1,326 | 1,324 | 1,327 | 1,358 | 1,339 | 1,349 | 1,370 | 1,358 |
| Workers Covered by Existing CBAs (000) (as of) | 228 | 220 | 231 | 229 | 233 | 220 | 228 | 214 | 218 | 226 | 228 |

Note: Details may not add up to totals due to rounding.

p Preliminary.

a Adjusted due to inventory.

Sources of basic data: Bureau of Labor Relations, Union Registration and Workers' Empowerment Division.

BLES (2015)
Outcomes: Less unions and bargaining and fewer workers covered by bargaining

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Note: Details may not add up to totals due to rounding.

* Less than 500.

a No regional breakdown available.
b Includes 92 charter certificates without regional breakdown.

BLES (2015)
Outcomes: Less unions and bargaining and fewer workers covered by bargaining

### TABLE 58 - Existing Workers' Organizations and Collective Bargaining Agreements by Region, Philippines: January - June 2013 (Continued)

(Preliminary)

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<td>2</td>
<td>2</td>
<td>-</td>
<td>21</td>
<td>8</td>
<td>-</td>
<td>5</td>
<td>11</td>
<td>16</td>
<td>3</td>
<td>-</td>
<td>4</td>
<td>12</td>
<td>4</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Workers Covered by New CBAs</td>
<td>29,405</td>
<td>18,891</td>
<td>160</td>
<td>152</td>
<td>-</td>
<td>3,303</td>
<td>945</td>
<td>-</td>
<td>210</td>
<td>1,030</td>
<td>1,398</td>
<td>417</td>
<td>-</td>
<td>1,000</td>
<td>1,672</td>
<td>227</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expired CBAs</td>
<td>174</td>
<td>109</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>13</td>
<td>14</td>
<td>-</td>
<td>1</td>
<td>5</td>
<td>9</td>
<td>5</td>
<td>2</td>
<td>3</td>
<td>7</td>
<td>2</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Existing CBAs (as of)</td>
<td>1,358</td>
<td>727</td>
<td>9</td>
<td>3</td>
<td>102</td>
<td>71</td>
<td>1</td>
<td>21</td>
<td>31</td>
<td>130</td>
<td>28</td>
<td>9</td>
<td>59</td>
<td>116</td>
<td>26</td>
<td>9</td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>Workers Covered by Existing CBAs (000) (as of)</td>
<td>228^</td>
<td>122</td>
<td>5</td>
<td>*</td>
<td>15</td>
<td>9</td>
<td>*</td>
<td>2</td>
<td>4</td>
<td>17</td>
<td>3</td>
<td>1</td>
<td>16</td>
<td>27</td>
<td>5</td>
<td>2</td>
<td>-</td>
<td>1</td>
</tr>
</tbody>
</table>

Note: Details may not add up to totals due to rounding.
* Less than 500.
a Adjusted due to inventory.
Source of basic data: Bureau of Labor Relations, Union Registration and Workers' Empowerment Division.

BLES (2015)
Outcomes: Less unions and bargaining and fewer workers covered by bargaining

• But multi-employer bargaining is possible in parent and subsidiary corporations because employer cooperation is easier to coordinate among interrelated companies.

• A step in this direction has been taken by Banco De Oro (BDO), a bank, and the National Union of Bank Employees (NUBE), a labor federation, in the Philippines.

• The parties signed a memorandum of agreement (MoA) that resulted in one (1) CBA for the rank and file employees of the parent and subsidiary corporations.
Outcomes: Less unions and bargaining and fewer workers covered by bargaining

- Based on the MoA, the recognized bargaining unit covers all rank and file employees of BDO and its subsidiaries, effectively placing within the scope of the negotiated CBA employees of the subsidiary corporations of BDO.

- Proposed legislation (Senate Bill No. 874 and House Bill No. 2826) requiring multi-employer bargaining in defined situations, e.g., obligation to bargain should multi-employer bargaining be demanded by a group of SEBA or a single employer or a group of employers, violation of duty to bargain collectively in multi-employer bargaining is deemed ULP, had been submitted to the 15th Congress of the Philippines.
Outcomes: Less unions and bargaining and fewer workers covered by bargaining

• These proposed Senate and House Bills show that the existing Philippine Labor Code fails to lay down guiding rules on trade union combinations and multi-employer bargaining and is incomplete.

• More centralized bargaining structures have not emerged, notwithstanding that conceptualizations of work do matter as articulated by Budd (2011).
Outcomes: Less unions and bargaining and fewer workers covered by bargaining

- The processes of trade union combinations and multi-employer bargaining as expressed in DO No. 40-03 are indicative of how work is seen by Philippine regulators, i.e., as an activity done by human members of a community entitled to certain rights or occupational citizenship. (Budd 2011)

- But their consensual nature under DO No. 40-03 is a constraining factor.
Conclusion

• The rules on trade union combinations and multi-employer bargaining came about in 2003 because of failure of institutions, incompleteness of statute and administrative action via regulation.

• However, there are no reported trade union mergers or consolidations and/or multi-employer CBAs in the Philippines (BDO-NUBE multi-employer CBA is not reported out in official data).

• There are fewer unions and CBAs, and fewer workers covered by CBAs.

• The consensual character of trade union combinations and multi-employer bargaining under DO No. 40-03 is a limiting factor.
Conclusion

• And the DoLE could not have mandated trade union combinations and multi-employer bargaining via administrative rule-making alone, in the absence of a statute authorizing it to do so.

• As noted by Kahn-Freund (1974), it is the “power structure” of a society that is critical in determining the transferability or transplantability of laws and legal institutions to other societies, and the disparities in the power and influence of organized interests, such as economic groups and trade unions, are part of the “power structure”. (Cooney and Mitchell 2000)
Conclusion

• Such disparities could be removed by specific legislation requiring trade union combinations and multi-employer bargaining in defined situations.

• Therefore, the Senate and House Bills are a step in the right direction.