

Overview of the Legal System in the Philippines

This is the first in a series of Bulletins that will be published over the coming weeks, with the aim of providing Members with an understanding of:

- 1) the legal system in the Philippines in general;
- 2) the standing of the National Labor Relations Commission (NLRC), which is a stand alone “Court of Expertise in Labor Law”;
- 3) “Garnishment” – the enforcement of the NLRC Commissioner’s “final and executory” decision.

Below is an overview of the legal system in the Philippines, relative to the handling of cases filed by seafarers before the NLRC.

- **CASE FILED BY SEAFARER (COMPLAINANT) with NLRC LABOR ARBITER**
- **LABOR ARBITER’S DECISION**
 - **if favourable** to the Respondents (Member), the case may still be elevated by the Complainant to the NLRC Commissioner, within 10 days of receiving the decision.
 - **if unfavourable** to the Respondents (Member), the case can (and normally should) be elevated to the NLRC Commissioner, supported a Supersedeas Bond, provided by a local Bonding Company, which is in turn counter-secured by a Club LOU (**NB**: the Association will require a Letter of Indemnity (LOI) from the Member, in respect of the non-assured parties named in the Complaint / decision, such as the Manning Agent and the Manning Agent’s Principal). In the alternative, a Member can provide a cash deposit in support of the Supersedeas Bond.
- **NLRC COMMISSIONER’S DECISION**
 - both parties can file a full or partial Motion for Reconsideration, within 10 days of receiving the decision.
 - if neither party file a Motion for Reconsideration within 10 days (which is extremely unusual), the decision becomes “**final and executory**”.
- **NLRC COMMISSIONER’S DECISION (Motion for Reconsideration)**

- **if favourable** to the Respondents (Member) and in the event the decision overturns an unfavourable decision rendered by the NLRC Labor Arbiter, which would have required a Supersedeas Bond, supported by a Club LOU, to be provided when the Memorandum on Appeal was filed, the Respondents can seek the return of the Supersedeas Bond, which will then see the cancellation and return of the Club LOU.

- nevertheless, the Complainant can still elevate the case by filing a Petition for Certiorari (request for Judicial Review) with the Court of Appeals within 60 days of receiving the NLRC Commissioner's decision on their and/or the Respondent's Motion for Reconsideration filed.

- **if unfavourable** to the Respondents (Member), then a decision needs to be taken as to whether it would be appropriate to file a Petition for Certiorari, with Prayer for the Urgent Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order (TRO) with the Court of Appeals.

It is the Association's view that in the majority of cases it would be appropriate to elevate the case to the Court of Appeals immediately, as this will both (a) strengthen the Member's negotiating power, if an amicable settlement is to be explored, and (b) provide the Court of Appeals with the maximum amount of time possible to act upon the Petition for Certiorari, before the NLRC Commissioner's decision is enforced by the Complainant. Whether the Petition for Certiorari is maintained, will thereafter depend upon whether:

a) discussions with respect to an amicable / negotiated settlement (which it is recommended are always explored, on a strictly without prejudice basis) breakdown and the case has merit to be elevated. We would also recommend that once settlement negotiations have reached an impasse and where it is a Member's intention to pursue a Petition for Certiorari before the Court of Appeals, that we seek agreement with the Complainant to make an interim / partial payment, under the terms of an MoA (Memorandum of Agreement), without prejudice to the Member pursuing the case before the Court of Appeals and Supreme Court (whether this is successful or not, will largely depend upon who the Complainant's Attorney is), or;

b) the case is one which the Member feels strongly should be contested on a point of principle (assuming the grounds for doing so have merit) and / or the case has the ability to support the favourable jurisprudence that already exists within the Supreme Court (of which there are 3 Divisions) and / or overcome unfavourable jurisprudence.

- **PETITION for CERTIORARI with COURT of APPEALS**

- assuming the Respondent's Prayer for the Urgent Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order (TRO) is denied (if actually considered in a timely manner) and the Complainant has enforced the NLRC Commissioner's decision against the Respondents, then the case will survive as a civil claim before the Court of Appeals (not a labor claim).

- dependant upon whom the Court of Appeals' decision favours, the losing party can file a Motion for Reconsideration with the Court of Appeals (if either party is unhappy with aspects of the decision, both may file partial Motions for Reconsideration).

- once the case has been decided by the Court of Appeals, either side can elevate the case to the Supreme Court, by filing a Petition for Review on Certiorari.

- **PETITION for Review on CERTIORARI with SUPREME COURT**

- dependant upon whom Supreme Court's decision favours, the losing party can file a Motion for Reconsideration with the Supreme Court (if either party is unhappy with aspects of the decision, both may file partial Motions for Reconsideration).

- once the case has been decided by the Supreme Court (following the decision in relation to any Motions for Reconsideration filed), this brings proceedings to a close and the Supreme Court's decision shall become part of the legal system of the Philippines [i.e. Jurisprudence], unless the Supreme Court directs a lower Court to review aspects of the case.

With Pandiman Philippines Inc
our Capt. Andrew Malpass
thanks Tel: +632 527 7831-40
to: Email: mis@pandiman.com
Internet: www.pandiman.com

Del Rosario & Del Rosario
Ruben Del Rosario / Herbert Tria
Tel: + 632 810 1791
Email: mail@delrosariolaw.com
Internet: www.delrosariolaw.com

Enquiries to the UK P&I Club should be directed to:

Tony Nicholson
Tel: +44 20 7204 2564
Email: tony.nicholson@thomasmiller.com



Del Rosario & Del Rosario



NLRC

NCMB

Supreme Court

**Writ of Execution/
Garnishment**

**Writ of Execution/
Garnishment**

Order of issuance of Writ

Order of issuance
of writ

**Motion for Execution with
Labor Arbiter**

**Motion for Execution
With VA or PVA**

Denial of MR:
10 DAYS FINAL AND
EXECUTORY unless
TRO issued by CA

Petition for Certiorari

TRO

TRO

**Court
of
Appeals**

*(allowed if lack of
jurisdiction or grave
abuse
of discretion
amounting
to lack or excess of
jurisdiction)*

Petition for Review

Decision: 15 DAYS
FINAL AND
EXECUTORY unless
TRO issued by CA;
usually no bond
as no appeal /MR

**Motion for
Reconsideration
(MR) with NLRC**

10 days

Notice of Appeal

Regional Trial Court

**NCMB:
Sole Arbitrator (VA) or
Panel of Voluntary
Arbitrators (PVA)**

NLRC Commission

APPEAL
10 days with bond
Use of CLOG

**Metropolitan Trial
Court**

Civil Courts

Refer to
VA if deadlock

**Union Conciliation
AMOSUP**

Mandatory Conferences
Position Paper
Reply
Rejoinder

Labor Arbiter

**Compulsory Arbitration
(National Labor Relations Commission)**

SEAFARER

**Voluntary Arbitration
(National Conciliation and Mediation Board)**