Mutual Gain or Zero Sum: Striking a Balance between Employer – Employee Concerns for a Sustainable Economic Growth

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Department of Labor and Employment Secretary Silvestre H. Bello III; PCCI President Alegria S. Limjoco and other colleagues at the PCCI Board; 27th MMBC Chairman Pete C. Dumana, Jr.; PCCI-North Regional Governor Julie M. Quiroga; PCCI-NCR Secretary General Delia B. Jimenez; PCCI members, other officers, partners and friends; ladies and gentlemen:

The past year and the 17th Congress have kept employers and business organizations very busy and very concerned about proposed policies and bills, particularly on labor, that have tremendous negative implications on business. While we have traced this pattern happening during election years, we get frustrated because these are disruptive, distractive and divisive attempts to challenge international best practices, conventions and even Constitutional principles that we already adhere to and implement. There is one silver lining though that helps mitigate potential harm, and this is continuing government engagement with private sector, notwithstanding the results.

As a guide and reminder to our partners and stakeholders, let me take this opportunity to share certain frameworks within which we intend to pursue a balance in employer-employee interest towards sustainable growth.

On the matter of Tripartism

The Employers Confederation of the Philippines or ECOP, the umbrella organization of Philippine employers, operates under the scheme of tripartism, with ECOP representing employers in various tripartite bodies of government. We participate in drafting, reviewing, and amending policies that will impact on labor relations, employees and doing business in the country. With us are organized labor and government, mainly the Department of Labor and Employment.

But employers must be represented in these tripartite agencies by genuine nominees; genuine meaning endorsed by the most representative sectoral organization which is ECOP. It is unfortunate that this scheme of representation has been breached. We noted that tripartism is only being observed in the case of the wage boards. ECOP has not been called to nominate employer representatives to the Social Security Commission (SSC), Technical Education and Skills Development Authority (TESDA), National Labor Relations Commission (NLRC), and PAG-IBIG Fund. For this reason, the Tripartite Industrial Peace Council (TIPC) has already raised the immediate appointment of and filling-up of the various vacant positions for genuine workers' and employers' representatives and/or commissioners in the various policy and decision-making and advisory bodies. We have yet to see concrete action to this call.

ECOP is also actively involved in the legislative process. Alongside our social partners, we submit position papers and participate in relevant public hearings. The goal is not for employers to win at the expense of workers or vice versa, but for all parties to strike a balance between the welfare of the workers and the right of business to a reasonable return of investments. What we ultimately desire is a business environment that is conducive to investments and an economy that generates and preserves employment.

On Minimum Wage Setting

Meanwhile, two of the most contentious issues that have been on the legislative agenda are wage setting and security of tenure.

Republic Act No. 6727 or the Wage Rationalization Act provides for the regional determination of minimum wage rates for both agricultural and non-agricultural workers. It created the Regional Tripartite Wages and Productivity Boards or RTWPB. Since 1989, regional minimum wage fixing has been done on a tripartite basis and so far, it works. These RTWPBs conduct public sectoral consultations and hearings. Regulations provide that any party can file for a petition increasing the minimum wage on an annual basis. But there is no provision for reduction of wages in case of economic downturns.

Despite the existence of an already effective system of determining wage, legislators, particularly those representing the populist party-lists, still keep pushing for bills that mandate across-the-board excessive wage increase, legislate a national minimum wage, and even abolish the RTWPBs.

Note that in determining wages, we are guided by the following:

1) The minimum wage should not be equated with living wage. It is an "entry" level to protect new entrants, especially the fresh graduates, into the labor market. Minimum wage also considers the employers' capacity to pay.
2) Minimum wage fixing should be depoliticized. Wage determination should be the function of the RTWPBs, not Congress. These Boards are in the best position to identify the rates, for they know the economic and business realities in their respective jurisdictions.
3) The law even promotes collective bargaining as the primary mode of settling wages and other terms and conditions of employment. Congress doesn't have to dip its finger in every pie.
4) Any unjustified increase will be particularly injurious to micro and small enterprises (MSEs).
5) Removing the regional minimum wage will scare investors away from the provinces, compromising our thrust to decentralize and spread economic activities to the countryside.

On Security of Tenure

We move to a red-hot labor issue now, security of tenure. This, we know, is a constitutionally guaranteed right of workers and the Labor Code recognizes this. However, the workers' right to security of tenure is not absolute. There is no such thing as perpetual employment especially if the employee is no longer performing. The law provides that employers have the power to dismiss an employee based on just or authorized causes subject to observance of due process. In protecting the rights of workers, the law authorizes neither oppression nor self-destruction of the employers.

Accordingly, jurisprudence has reiterated time and again that the exercise of management prerogative is not subject to interference so long as done in good faith.

It is also a recognized fact that to promote and enhance business efficiency and productivity, employers need more flexibility in terms of operating and conducting the business. Rigidity in employment arrangements must be reduced, especially in this era of the Fourth Industrial Revolution.

We know that the security of tenure bill was recently passed by both Houses of Congress based on the Senate version (Senate Bill 1826) following the certification of the bill by the President as urgent. It has always been our stand that this bill is not necessary and will only worsen unemployment and underemployment.

True, the intentions of this legislative measure are good: to promote workers' security of tenure and to end ENDO practices. The term "ENDO" is commonly known as an employment malpractice where workers are hired for a period of less than six months at a time to avoid making them regular employees. Both DOLE Department Order No. 174-17, which took effect in 2017, and Executive Order No. 51, which took effect in mid-2018, already prohibit ENDO. And ECOP supports these policies. So if ENDO is dead, isn't Senate Bill 1826 superfluous?

We also do not want this bill to be used as a recruitment tool for labor unions. It is quite clear that organized labor wants regular employment mandated because of the decline in union membership and the difficulty in

organizing contract workers because of the nature of their work. But workers, while hired by service providers, expect the same treatment as employees of the principal. Employees should not be compelled to join unions if they don't want to. Freedom of association should not be interpreted as an obligation to join organizations. It also includes the prerogative not to join.

Passing the security of tenure bill is therefore counterproductive especially for businesses which are dealing with the changing world of work. The concept of dependent employment is steadily being eroded. Under the future of work, there will be an unprecedented rise of independent contractors, telework, and a constellation of other internet-enabled companies. In fact, the regulatory framework must be re-examined to make it more flexible to facilitate business and job creation instead of obstructing new forms of employment as what would be the consequence of the security of tenure bill in the event it is signed into law.

Bad Signals

We have always espoused labor law reforms to provide more flexibility for employers without violating employee rights. Unfortunately, the Philippines tend to adhere to extreme measures that bills even provide for unconstitutional excessive penalties as well as criminalization. Consistent with this, ECOP has argued mostly against the cost and productivity implications of some bills that have been passed. These include Republic Acts No. 11058 or the Occupational Safety and Health Law and 11165 or the Telecommuting Act in 2018 and Republic Act No. 11210 or the Expanded Maternity Leave Act this year.

Caution should also be exercised in doing piece-meal reviews of the Labor Code and certain policies, as we may lose sight of the bigger perspective and do more harm in the process.

There is also the tendency to favor certain segments of society with laws that may appear to benefit them but are actually working against them. I specifically refer to bills giving more and more incentives to women that employers are now thinking twice in hiring them. Remember that legislation and policymaking should also be able to create more jobs, not just add benefits to those who are already employed.

Conclusion

In our search for a balance, productive and harmonious employer-employee relationship, it may be worth considering these ways forward:

1) Let us not legislate the generosity of employers. Some employers are already providing benefits over and above statutory standards through collective bargaining and corporate social responsibility.
2) Let us not make unreasonable, stringent legislations that will harm the micro and small enterprises which comprise 98% of the economy.
3) Let us decriminalize our labor laws. This is a disincentive to investment. Let us not intimidate and threaten investors, both existing and prospective, by putting punitive sanctions in our laws.
4) Let us zero in on enforcement. We already have good laws. It's just a matter of effectively implementing them and capacitating all parties – companies, workers, and Labor inspectors.

5) Let us focus our attention on creating more and preserving existing jobs. Increasing and expanding the benefits of those that already have jobs will tend to neglect and worsen the condition of the unemployed and underemployed sectors of the society.
6) Let us also allow companies and their respective unions to strengthen their bipartite relations and engage in social dialogue at the plant level. It is the employers and their workers who understand the dynamics and realities in their respective enterprises, not any third-party spectator.

In summary, we have always supported laws and policies that will truly be beneficial to the economy as a whole – those that attract investment, generate productive employment, and preserve existing jobs. Instead of fixing what is not broken, let workers and their employers help each other in fostering a culture of responsible and ethical business conduct that will eventually translate into industrial peace and harmonious labor-management relations.

On this note, may I end my message and wish you all a meaningful Conference. Thank you and good morning.