

Understanding Philippine labor policies

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Abstract

In order to come up with good recommendations on how to improve the labor policy environment, it is important to have a good understanding of the context of present labor policies—their foundations, purpose and role, and the realities facing their implementation. Much of the difficulty in reforming labor policy is due to the societal values labor policy is made to bear. Policy-makers before us have left a legacy of high labor standards that are protective of workers' rights and welfare, and a labor policy making and implementation process that is democratic.

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1. Introduction

There is much talk lately on the need to reform the Philippine labor market, particularly, Philippine labor policies. The idea is not new. There have been initiatives to amend the Labor Code since the early 1990s to make it more responsive to the demands of the times. But not much has been accomplished after four Congresses. The high unemployment and underemployment rates, which have persisted, continue to demand an urgent solution. In order to come up with good recommendations on how to improve the labor policy environment, it is important to have a good understanding of the context of present labor policies. I therefore submit some points to consider.

Simply, labor policies are those aspects of government policy that regulate employment and workers' welfare, from hiring to firing, from pre-to-post-employment (Sicat [2004]). There are three major issues regarding Philippine labor policies. One, they are based on the standards of highly developed markets, which is not congruent with the country's level of development. Two, labor policies are highly regulatory and protective of workers rights, which is not suitable for a country with a huge labor surplus. Three, labor policies tend to be pro-employed rather than employment-oriented, therefore aggravating the unemployment problem.

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2. Are labor standards too high?

Philippine labor policies use the standards of highly developed markets because they are benchmarked to international labor standards. The Philippines became a member of the International Labor Organization in 1948, during the time of President Quirino, regarded as the golden years of Philippine labor. It was during this time that giant strides in labor legislation were taken, never again equaled in Philippine legal history, that laid the foundation for subsequent labor policies (International Labor Affairs Service [1998]).

For instance, on 6 April 1951, ILO Convention 95 (Protection of Wages) and draft Convention 99 (Minimum Wage Fixing Machinery in Agriculture) became Republic Act 602 or the Minimum Wage Law, which in turn provided the basis for the Social Security Law established under RA 1161 on 18 June 1954. Moreover, on 17 June 1953, Conventions 87 (Freedom of Association and Protection of the Right to Organize) and 98 (Right to Organize and Collective Bargaining) became RA 875 or the Industrial Peace Act – known as the Magna Carta of Labor (Ibid.).

I would say that the policies on minimum wage and unionism, the foundations of which were laid down half a century ago, are among those most criticized at present as highly protective of labor.

We should take note that the policy of benchmarking along international standards was instituted at a time when the Philippine economy was relatively more developed compared to its Asian neighbors. If the economy failed to sustain this relative level of development, should labor policy and standards retrogress?

3. Are labor policies too protective and restrictive?

Some sectors describe the Philippine labor market as rigid or inflexible. When asked what exactly they mean, I get the impression that they view labor policies as very protective of workers, and labor-management relations are so dictated by rules to the point of being legalistic.

3.1. Purpose of labor policy

A deeper understanding of labor policy calls for an understanding of labor policy's purpose. In the Philippines, the government bureaucracy is organized according to sector: economic, social, political, etc. The Department of Labor and Employment is classified under the social sector. I do not know how this came about. But I surmise, this is because labor policy is considered primarily as social policy. As social policy, labor policy is expected to be inherently protective of workers' rights and welfare.

Labor policy established that employees have the right to a just share in the fruits of production in the same manner that employers are entitled to reasonable returns

on their investments. Labor laws (e.g., RA 6727—"1989 Wage Rationalization Act", RA 6971—"Productivity Incentives Act of 1990") encourage both parties to develop mechanisms to improve efficiency, competitiveness and productivity, which result in increased incomes for employees and long term sustainability of businesses. However, both parties often cannot settle their issues by themselves. Some say that this is cultural. It is in Filipino's culture to avoid confrontation, so the use of go-betweens or mediators. Hence, government.

Finding the balance between the interests of workers and employers remains an age-old challenge. For example, employers always threaten that minimum wage increases may lead to lay-offs or higher prices. Workers always complain that wages are not enough to make a living. For many employers, it is just a matter of profits. For many workers, it is a matter of survival.

To my mind, the government's reason for intervening in the market is to balance the cold "invisible hand" of the market, because the reality is that the abundant resource has little bargaining power in a free market economy. There is more need for protective labor policy in a labor surplus economy.

If labor policy is so coddling of the workers, how come labor leaders often complain that the Department of Labor is actually the "Department of Management"? This is because the Labor Department cannot really favor the workers all the way. Since jobs are in the hands of employers, the Labor Department has no choice but to consider the predicament of employers as well.

The problem with the labor portfolio is that a decision would rarely make both clients happy. Even decisions arrived at through tripartite mechanisms or social dialogue are often questioned by either party as favoring the other one. Worse, a policy that would favor employed workers is also criticized of being biased against unemployed workers. It's a "damned if you do, and damned if you don't" situation. Indeed, this makes labor policy-making and administration most interesting and challenging.

3.2. Realities in administering labor policy

A deeper understanding of present labor policies calls for an understanding of the realities facing the implementation of labor policies. Labor policy administration cannot ignore the signals of the market, for difficult markets make implementation of labor policy difficult.

Labor policymakers and administrators are aware that legislations cannot overrule the law of the market. Hence, minimum labor standards always have exemptions, if not in law, in practice.

For instance, the minimum wage law has built-in exemptions. Automatic exemptions are persons in the personal service of another including househelp and family drivers. Exempted upon approval of the Wage Board are (1) retail/service

establishments regularly employing not more than 10 workers; (2) distressed establishments; (3) new business enterprises set up within a one year period from the date of effectivity of the Wage Order; (4) banks under receivership or liquidation; and effective 2nd quarter of 2003, (5) barangay micro-business enterprises (BMBES)¹.

The Labor Department has also liberalized the enforcement of labor standards through the New Labor Standards Enforcement Framework (DO 57-04). The Framework adopts a combination of voluntary compliance, self-regulation, and inspection. Because of the reality that Small and Medium Enterprises (SMEs) cannot simply afford to comply with labor standards, labor enforcement is soft on small enterprises. Voluntary compliance among these enterprises shall be developed through technical assistance that would enable them to improve their working conditions at least cost. On the other hand, self-regulation shall be applied to large establishments with unions where labor-management partnership shall be encouraged to ensure the implementation of labor standards. Hence, the usual regulatory approach through inspection shall be applied only to medium-sized establishments (employing 10-199 workers), to complained establishments, to establishments where there is an incidence or possible occurrence of accidents, and those highly hazardous establishments.

Moreover, given the characteristics of the employed workforce, only about 36.5 percent or 11.0 million are workers in private establishments, and therefore, can be effectively covered by labor regulations. The rest are own-account workers, unpaid family workers, workers in own family business, private households and government. A closer look will also indicate that the applicable number can be only 8.2 percent or 2.5 million. This number is composed of the rank and file, agency-hired, and non-regular workers in non-agricultural establishments with 20 or more workers. In other words, while labor standards are supposedly applicable (unless otherwise stated) to all workers by law, practical conditions pose natural exemptions, which soften the restrictions of the law.

One may therefore ask, "If the law is not applicable to most workers, why the law?" I once asked a labor leader a similar question, "Why do you insist on getting unrealistic laws passed?" He said, what they don't have in fact, they would want to have in law, at least.

3.3. Policy on job security and termination

On the issue that labor policy is highly restrictive, let me cite the case of the policies on job security and termination, which I think are often complained about by employers.

Labor law provides for security of tenure, that is, employment shall be deemed regular when the employee is allowed to work after a 6-month probationary period;

¹ Any business entity or enterprise engaged in processing or manufacturing of products or commodities, including agro-processing, trading and services (excluding those rendered by any one, who is duly licensed by the government after having passed a government licensure examination, in connection with the exercise of one's profession), whose total assets (refers to those owned and used

except in cases of fixed term employment, which is determined at the time of engagement, and when the job is seasonal in nature.

This policy was not much of an issue until the era of globalization brought about business uncertainties. It is but natural for employers to be wary of hiring workers on a permanent basis when there is much insecurity about the survival of the company in the first place. Hence, employers have introduced changes in their production systems and flexible employment arrangements. I would say that they are maximizing the external flexibility allowed by law in the context of fixed-term employment, seasonality, and job contracting. Internal flexibility is also introduced in the form of flexi-wages and flexi-time. The Department has recognized these adjustments that have to be undertaken through the issuance of administrative guidelines aimed at deregulating wages and hours of work. However, some quarters believe that legislative amendments have to be introduced.

On termination, according to policy, there are two grounds for termination: just cause and authorized cause.

Just cause is defined in Art. 282 of the Labor Code, to wit:

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

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- (e) Other causes analogous to the foregoing.

Implementation of this law requires that due process is observed. The employer should notify the employee about his offense, and the latter should be given a chance to explain or defend himself of the accusation. (If it involves grave offense, which should be defined in the company rules and regulations, normally the employee is already on preventive suspension at this time.) A second notice should be served terminating the services of the employee on the ground identified in the first notice. There is no prescribed period for the effectivity of termination. There is no requirement to notify or get the Labor Department's permission to fire the employee on just cause.

for the conduct of business) including those arising from loans but exclusive of the land on which the particular business entity's office, plant and equipment are situated, shall not be more than three million pesos (P3,000,000.00); and must be duly registered and included in the BMBE Registry of the city or municipality where it is located.

On the other hand, authorized cause is defined in Art. 283 and 284 of the Labor Code, which reads:

Art. 283. Closure of Establishment and Reduction of Personnel. – The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking... by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof...

Art. 284. Disease as Ground for Termination. – An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as the health of his co-employees...

It is clear from policy that for authorized cause that involves business survival, the only requirement is for the employer to serve a one-month notice to the concerned employee and the Department of Labor. The rationale behind serving notice to DOLE is for the Department to be able to assist the would-be displaced workers find another job or means of livelihood. Approval of the Department is not a requirement, and the Department has no authority to penalize companies that do not give notice. However, recent Supreme Court rulings state that failure to give notice to the Department of Labor is also ground for illegal dismissal.

Labor policy clearly recognizes the right of the employer to remove an employee when it deems essential, that is, to discipline the worker or if warranted by business conditions. In both cases, the approval of the Department of Labor is not required, but the concerned employee should be notified. If ground is just cause, the worker should be given due process. If ground is authorized cause concerning business survival, the Department should also be informed in order to help the would-be displaced workers. Losing a job would mean losing one's means of living. Is the requirement on employers to give notice and due process unreasonable?

According to employers, there is no symmetry in the policies involving the hiring and firing of workers. Hiring is very easy. But firing is extremely difficult because the burden of proof is on them. On the other hand, if workers are asked, they will claim the opposite. According to them, it's so easy to lose a job, but too difficult to find one because the burden of proof is on them. Therefore, I would say that whether labor policy is highly restrictive of business or protective of workers depends on from whose point of view one is looking at it.

3.4. Minimum wage policy

The minimum wage is another protective provision that is often accused of discouraging employment creation. The 1989 Wage Rationalization Act spelled out the policy on minimum wage increase, productivity and employment generation.

The law intends to rationalize the fixing of minimum wages consistent with the rights of labor to a just share of production, the rights of business to reasonable returns to investment, and the demands of economic development. The Regional Tripartite Wage and Productivity Boards (RTWPB) were created as the implementing mechanism. The RTWPB are composed of seven members – three from government (DOLE – chair, NEDA, DTI), two from employers, and two from the labor sector. They are tasked to determine wage increases. Moreover, a National Wages and Productivity Council (NWPC) was created at the national level, with similar tripartite composition, charged to define policy.

There are criticisms on the minimum wage pushing the unit cost of labor way above what is warranted by market realities; therefore, a disincentive to invest and invest in labor-intensive industries, hence anti-employment. It should be pointed out, however, that labor cost is only one of the items that go into the cost equation of doing business. I believe the issue really is the cost of doing business, which also includes transport, power, taxes, interest rates, red tape, and corruption. It should be noted that often, business commentary is not really on the unit cost of labor but on the other costs of production. Proof is that in 2001, US\$1.14 billion foreign direct investments came into the country while there was a wage increase in many regions. But last year, only US\$161.0 million FDI came though there was no wage increase. Investors decided on the basis of the peace and order situation, political stability and quality of governance, cost of power, and competition from China and other Asian economies. So why then do we harp on the minimum wage as the culprit?

Labor policy respects privately-reached employment and wage contracts. The regional tripartite minimum wage fixing mechanism was in place since 1989, and this has introduced an element of moderation in minimum wage setting. Proof is falling real wages, which implies that minimum wage increases through the years were not even enough to cover for inflation.

Further reforms are being contemplated by the Labor Department in wage setting. A two-tiered mechanism is being studied: regional and industry. Wage policy-makers are aware that regional wage fixing does not reflect industrial differences. A two-tiered system aims to capture industries' different capacities to pay.

3.5. Dispute settlement issues

Much of the rigidity in labor administration can be attributed to the legalistic manner by which disputes are settled. It is observed that the dispute settlement infrastructure that deals with labor cases has provided monopoly power to regulators and therefore, has given rise to an industry of legal fixers, consultants and lawyers who specialize in making the resolution of otherwise easy labor cases, difficult.

While policy prefers the bipartite settlement of labor disputes through plant-level grievance machinery and labor-management councils or committees, there

seems to be a penchant among the two protagonists to bring their issues to a third party, the government, even if this could prove very costly for both of them. By the time the case reaches the labor courts, the worker is already unemployed. On the other hand, the employer is forced to retain a battery of lawyers to handle the pending cases.

Why do plant-level negotiations break down? One reason is the very legalistic manner in which disputes are being settled. How many CEOs would find time to directly talk to their employees, instead of just allowing their lawyers to deal with the problem? How many employers would rather pay big sums to lawyers and bribe regulators instead of paying their workers right?

In the first place, why do labor disputes arise? How many employers and workers are actually aware of their rights and obligations? I believe that non-compliance with labor standards, whether perceived or real, is usually the root cause of a labor dispute, which in most cases, emanates from ignorance of basic rights and obligations.

As manifested in the 2004 DOLE Transition Report, labor policy-makers are not blind to the institutional problems attendant to keeping industrial peace, a necessary condition in preserving and attracting employment.

Legal reforms should pursue the adoption of alternative dispute resolution procedures that emphasize less adversarial, less legalistic, and firm-level mechanisms. Book V of the Labor Code should adhere to cooperation-based labor-management relations. The nature of relationship should be shifted from adversarial and legalistic to one founded on strategic partnership.

These values can be espoused through an extensive labor education program aimed at bringing about mindset changes among industrial partners. Shared responsibilities can be inculcated in the consciousness of future workers by introducing a permanent curriculum on labor-management relations in high school.

Labor relations policies should be made both responsive and responsible to national development, particularly during periods of national emergency. Strikes and lockouts must give way to a rational process such as arbitration, preferably voluntary than compulsory. Labor justice must be implemented expeditiously without sacrificing due process.

4. Are labor policies anti-employment?

A deeper understanding of labor policy requires an understanding of labor policy's role within the government policy framework. Philippine labor policies tend to be pro-employed rather than employment-oriented because employment generation is not the primary function of labor policy.

As a social policy, labor policy cannot dictate the path of economic development. It can only support labor-intensive development, but it cannot determine it. Since employment is primarily a function of economic growth, then employment generation should be the primary function of investment, trade, fiscal and other economic policies. Sadly however, these economic policies have no employment bias. Many are even anti-employment. In fact, previous Philippine development plans have treated employment as only a residual to growth. As residual, it was taken for granted. The Labor Department has long been advocating that employment be placed high in the national policy agenda. Only recently has employment taken center stage in the 2004-2010 new Medium-Term Philippine Development Plan.

But still, the employment policy challenge remains: to formulate a unified policy framework to promote decent employment for every Filipino worker.

4.1. Limitations of labor policy

A deeper understanding of labor policy also involves an understanding of the limitations of labor policy. Labor policy is not solely accountable for the failure of the labor market, and therefore, it cannot solely solve its problems.

Reforming the labor market would require a review of the whole gamut of policies, aside from labor policy, which influence the behavior of the market. Population, education and even, health policies largely influence labor supply. On the other hand, fiscal, monetary, trade and investment policies directly impact on labor demand. Reforming labor market policies to make them pro-employment would mean placing an employment-bias in all these policies.

4.2. What labor policy can do

A deeper understanding of present labor policies calls for an understanding of what labor policy can do. While labor policy can do little in generating employment (meaning, creating new employment opportunities), it can contribute much in preserving, enhancing and facilitating employment.

In the area of employment preservation, labor policy can promote industrial peace by enhancing harmonious worker-employer relationships. Industrial peace, which significantly contributes to the preservation of employment, can be achieved through freedom of association and free collective bargaining, continuing social dialogue, mediation and voluntary arbitration of conflict, and shared decision-making mechanisms at the firm, industry, sector, and national levels. These measures are expected to address the issue of mutual trust and confidence among the parties. In the process, the industrial relations paradigm should shift from one based on confrontation to one based on cooperation. On the basis of this new paradigm, productivity and competitiveness can be achieved.

Basic to harmonious labor-management relations is a balance of interests between the two parties. In the area of employment enhancement, labor policy can contribute to improving the quality of the workforce (in terms of competencies, productivity and work values) and quality of employment (in terms of work conditions, remuneration and welfare).

For employment facilitation, labor policy deals with developing and improving access to employment opportunities and alternatives, local and foreign, by providing accurate and up-to-date labor market information to improve the matching of skills and jobs.

Some sectors are quick to point out the failure of labor policy in generating employment, but are slow to recognize the contributions of labor policy in the areas of employment preservation, enhancement, and facilitation. Employment generation is not the turf of labor policy, and therefore, I do not expect it to garner high points on this. However, when assessed in its areas of concern, I can say that labor policy is fairing generally well.

For instance, in the area of promoting industrial peace, although there are isolated cases of violent strikes and there is still a large number of strike notices (after all, workers have the right to strike), the incidence of strikes has been falling. The Department has a record of 94 percent conciliation success rate, which means that nine out of ten notices of strikes were averted from materializing into actual work stoppages through timely conciliation and mediation services.

In the area of employment enhancement, technical-vocational education and training which is under the supervision of the Technical Education and Skills Development Authority (TESDA), an attached agency of DOLE, benefits about 1.0 million graduates per year with an employment rate of 60 percent. This compares well with higher education, believed to have only 40 percent employment rate. Productivity is also being enhanced through least cost schemes or technologies being developed and propagated by the NWPC. However, it should be noted that productivity is more the function of management than labor; and the burden of improving the quality of the workforce hinges much on education policy.

In terms of improving the quality of employment, such as work conditions, remuneration and welfare, labor policy is much criticized for not doing this well.

The failure of the domestic labor market to generate the much-needed jobs has contributed to the development of an alternative: overseas employment. The overseas employment program is believed to be a success (in terms of job and income generation) because it is primarily private sector-led, and therefore, relatively less regulated. Overseas employment has its own set of rules and regulations. As to whether its rules are less regulated and protective of workers, it is difficult to assess.

However, I would say that much of the success of overseas employment could be attributed to labor policy, which facilitates the placement of Filipino workers in the growing economies of other countries. Other countries generate the jobs. Overseas employment policies encourage the sourcing of these jobs for our workers.

4.3. Crafting labor policy

Lastly, a deeper understanding of labor policy should account for the manner by which labor policies are crafted and implemented. The Department of Labor has long promoted social dialogue through the policy instrument of tripartism. Since 1987, tripartism has been institutionalized not only as a consultative process but also as a policy-determining and decision-making process. Its role is to facilitate and encourage consensus among stakeholders in resolving labor and employment issues.

Thus, the levels of labor and employer participation range from consultation and advice (as in the Tripartite Industrial Peace Council), policy-making (as in the Philippine Overseas Employment Administration), decision-making (as in the National Labor Relations Commission), and co-determination (as in the Regional Tripartite Wages and Productivity Boards).

I would venture to say that labor policy-making in the Philippines is the most democratic, and arguably as a consequence, most political.

5. A final note

Much of the difficulty in reforming labor policy, I believe, is due to the societal values labor policy is made to bear. Policy-makers before us have left a legacy of high labor standards that are protective of workers' rights and welfare, and a labor policy-making process that is democratic.

We expect labor policy to embody our aspirations for our workers, though existing circumstances point that they are impossible to attain. We want workers to have work that would provide acceptable livelihoods for themselves and their families, affording them dignity and respect. We want work that is freely chosen and not forced on us; work that is fair and provides security. In short, we want decent work. And we hope that someday, we will indeed attain these aspirations because we did not let go of them in our present labor policy.

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