THE STATE OF PHILIPPINE VOLUNTARY ARBITRATION*

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Executive Summary

Industrial peace depends upon mutual trust and respect between labor and management, and requires constructive relations to enhance cooperation and downplay confrontation. Because of the socio-political-economic impact of a labor-management dispute, no less than the 1987 Constitution has established the principle of shared responsibility and given preference to voluntary modes of settling disputes.

The National Conciliation and Mediation Board (NCMB) is mandated to administer the voluntary arbitration program pursuant to the Labor Code. The Board has engaged in nationwide activities to promote voluntary arbitration as the "better alternative" in labor dispute settlement.

This study presents the historical background, current constitutional and statutory framework, and the track record of the voluntary arbitration program from 1988 to June 2005. The following findings and recommendations have been identified:

- Heightened promotional efforts towards program acceptability. Voluntary arbitration made progress when the awareness campaign in the early 1990s was at its peak. The tri-media campaign during this period can be revived.

  At the plant level, programs must be promoted and strengthened with the assistance of NCMB facilitators and trainers.

- Strong budget support. This requires congressional appropriations for the Special Voluntary Arbitration Fund (SVAF).

- Speed and quality of VA decisions. Knowledge and skills upgrading or retooling of VAs could improve the speedy and quality of decisions or awards. It took 171 days for a VA to decide a case from the date of filing and 51 days from date of submission for decision. While these findings fare better than the compulsory arbitration record, there is still room for improvement. There is also a 21% appeal rate and 85% affirmance rate, suggesting the high quality of decisions. The VA accreditation system must also be upgraded to improve the track record.

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* Presented in the Roundtable Research Conference sponsored by the Department of Labor and Employment Institute for Labor Studies (DOLE-ILS) on 27 July 2005.
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There must be simple, updated, and streamlined voluntary arbitration procedures, especially in the matter of execution of decisions and awards.

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I. Introduction

Industrial peace depends upon mutual trust and respect between labor and management, and requires constructive relations to enhance cooperation and downplay confrontation.

Because of the socio-political-economic impact of a labor-management dispute, government has the responsibility to undertake the following: 1) enact and enforce labor laws and regulations; and 2) promote the shared responsibility of workers and employers to voluntarily settle labor disputes. To fulfill these mandates, the Department of Labor and Employment (DOLE) is tasked with the primary responsibility of ensuring the maintenance of industrial peace by promoting harmonious, equitable, and stable employment relations.

The National Conciliation and Mediation Board (NCMB) is mandated to administer the voluntary arbitration program pursuant to the Labor Code. The Board has engaged in nationwide activities to promote voluntary arbitration as the "better alternative" in labor dispute settlement. A five-year plan conceptualized during the first year of operations was implemented in order to address the problems identified by the Tripartite Review Committee on Labor Relations created in early 1988, which included, among others, the accreditation and training of voluntary arbitrators and institutionalization of procedural guidelines in the conduct of voluntary arbitration proceedings.

Support from various social partners was obtained in the succeeding years. The association of voluntary arbitrators now known as the Philippine Association on Voluntary Arbitration (PAVA) was institutionalized.

A huge amount of resources were utilized for a tri-media campaign to ensure an effective nationwide awareness program. Other information, education, and communication materials were produced and published to provide the public not only with basic information, but also with an update on trends and developments in labor relations. Various other mechanisms included the signing of a memorandum of agreement with institutions such as the Office of the Solicitor General (OSG), Integrated Bar of the Philippines (IBP), Department of Justice (DOJ), prominent colleges and schools of law, major federations and labor centers, employer associations and a host of others.

The program took off in its early years. There were signs of acceptance as manifested by the increase in the number of cases submitted to arbitration until 1996. Beginning 1997,

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however, there was a dramatic decline in the submission of cases, from a decrease of 5% in 1997 to a 26% drop in 1999. From 2000 to 2002, submission of cases reached a plateau, averaging 212 per year. Beginning 2003, cases were below the 200 mark: 175 in 2003 and 152 in 2004. The cases for the first half of 2005 are 3% lower compared to the 75 cases submitted for the same period last year.

The decline in VA cases needs to be addressed. There is a need to conduct a deeper diagnosis of the problems underlying the system. Through effective assessment and evaluation of the real situation, appropriate courses of actions can be proposed.

Hence, this study.

The paper is divided into five parts. The first part delves into the historical evolution of voluntary arbitration. The paper traced the changes that the voluntary arbitration program went through in different periods, until the existing framework in the prevailing labor relations system.

The second part focuses on the constitutional and Labor Code framework of the system.

The third part reports on the current state of voluntary arbitration, including efforts to make the system a viable option in dispute settlement.

The fourth segment deals with a survey of jurisprudence on voluntary arbitration.

Lastly, the state of voluntary arbitration and jurisprudence survey yielded findings and recommendations that can make the program more responsive and a significant component of the alternative dispute resolution system.

II. Emergence of Voluntary Arbitration

A. SOCIO-CULTURAL ROOTS

The concept of voluntary arbitration is not new. Long before our great ancestor Datu Lapu-lapu engaged the Spanish Conquistadores in the historic battle of Mactan, our forefathers were already resorting to "voluntary arbitration" in resolving tribal conflicts.[1] Disputes involving properties and even personal relationships were threshed out with a chosen respected third party, usually an elder, who hears the arguments of both parties, establishes facts, and resolves the dispute. The respected elder then issues an opinion taken as judgment by those concerned. The parties, often without rancor, dutifully abide by the decision and lay to rest the dispute with finality.

[1] Torres, Ruben D. 1989, Speech as Undersecretary of Labor and Employment delivered during the Institute on Grievance Settlement and Voluntary Arbitration, Bacolod City.

B. ACT 4055 (1933)[2]

In the early days of American rule, there was no law on labor relations. Relations between labor and capital and servant and master were governed by the pertinent provisions of the old Civil Code (Articles 1583 to 1587, regulating to a very limited extent the relationship between master and domestic servant) and the Code of Commerce (Articles 283 to 302, regulating also to a very limited extent the relationship between an employer and his employees).[3] While formation of unions was not prohibited, the American administration discouraged the existence of unions and labor organizations for fear that they would be a breeding ground for subversion and rebellion.

President Manuel L. Quezon advocated social justice, especially when the country was faced with serious problems in the cigar and cigarette factories in Manila and agrarian unrest in Central Luzon.[4] Laws were passed to alleviate the plight of the working class. One important piece of legislation was Act 4055 promulgated on 27 February 1933, which made conciliation, mediation and voluntary arbitration part of State policy to resolve controversies between landlords and tenants, and between employers and employees.[5] The law tasked the Department of Justice to have such number of special mediators available from time to time to handle disputes.[6]

Under this statute, the Director of Labor could call upon the mediators of the Department of Justice to mediate and conciliate the dispute between the parties. When these efforts failed, the mediators and the Director of Labor could persuade them to submit their dispute to voluntary arbitration.[7]

The Act also provided for a procedure in submitting disputes to voluntary arbitration, to wit:

> **Sec. 3.** If the parties to a controversy should agree to submit voluntarily to arbitration, a board of three persons shall be chosen in the following: one of the special mediators provided for in section one, one who shall be the chairman, shall be designated by the Secretary of

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[2] Act 4055, Approved on 27 February 1933: An Act Providing for Mediation, Conciliation and Arbitration in Controversies between Landlords and Tenants and Between Employers and Employees, and For Other Purposes.

[3] Francisco, Vicente J. 1949,The Law Governing Labor Disputes in the Philippines, Manila, p. 244.

[4] Cagaanan, Jovito. 2001, A Compendium on Labor Relations, Manila, p.1.

[5] Francisco, op.cit. p. 245.

[6] Section 1, Act 4055.

[7] Sec. 2. Whenever a controversy concerning wages, hours of labor, or conditions of tenancy or employment between landlords and tenants or between an employer and his employees or laborers, or a strike or lockout shall arise, or is imminent and likely to disturb the public peace and order, one or more of the special mediators provided for in section one of this Act shall, when the Director or Labor, should deem advisable to terminate his intervention in accordance with subsection (d) of section two thousand fifty-nine-of the Revised Administrative Code, and at his own request or when so ordered by the Governor General, put themselves in communication with the parties to such controversy with all practicable expedition and shall be their best efforts, by *mediation and conciliation to amicably settle the same*; and if such efforts to bring about an amicable adjustment through mediation and conciliation shall be unsuccessful, the said special mediators shall at once endeavor to induce the parties to submit their controversy to arbitration in accordance with the provisions of this Act.

> Justice; one shall be named by the landlord or employer directly interested, and one by the tenants or employees or laborers or labor organization to which the tenants or employees or laborers directly interested belong, of if they belong to more than one, by all such labor organizations. In the event that the tenants or employees or laborers engaged in any given controversy are not members of a labor organization, such tenants or employees or laborers may select a committee which shall have the right to choose one arbitrator[8].

The agreement to arbitrate in the Act mirrored the American model of arbitration, stipulating that the agreement should be in writing; should state specifically the questions submitted to the board of VAs for decision; and should stipulate that arbitration shall be under the provision of Act. Such an agreement should be signed by accredited representatives of the landlord or employer and of the tenants, employees, or laborers. [9] The decision of the voluntary arbitrator could be appealed to the Court of First Instance,[10] and then to the Supreme Court.[11]

The set-up was voluntary because the conciliation, mediation and voluntary arbitration services were merely an offer on the part of government authorities.[12]

It bears noting, however, that many of the laws passed during the period were good on paper, but never really implemented. The members of the big capitalist class, most of them Americans, openly opposed the passage and implementation of these laws.[13]

C. 1935 CONSTITUTION

The social justice program of President Quezon was embedded in the 1935 Constitution, which states that ". . . the promotion of social justice to insure the well-being and economic security of the people must be a concern of the State."[14] This policy was manifested in Section 6, Article XIV, specifying the role of the State in regulating the relations of landowner and tenant, and labor and capital. The "afford protection to labor" clause provided:

> The state shall afford protection to labor, especially to working women and minors, regulating the relations between landowner and tenant, and between labor and capital in industry and agriculture. The State may provide for compulsory arbitration.

[8] Section 3, Act 4055.
[9] Section 4, Act 4055.
[10] Section 9, Act 4055.
[11] Section 10, Act 4055.
[12] Confesor, Nieves R. 1980, Voluntary Arbitration as a Mode of Dispute Settlement, Unpublished Thesis, Graduate School of Business, Ateneo de Manila University, Manila, p.59.
[13] Cunanan, Jose Pepz, 1986, Evolution of Labour Legislation in Asia, downloaded from <www.daga.dhs.org> .
[14] Section 5, Article II, Declaration of Principles, 1935 Constitution.

D. COMMONWEALTH ACT 103 (1936)[15]

Pursuant to 1935 Constitution, the legislature passed the first labor relations law of the Philippines, Commonwealth Act 103, which established compulsory arbitration as the principal mode of dispute settlement. This law provided for the creation of the Court of Industrial Relations (CIR), with the power to compulsorily arbitrate all labor disputes.[16]

The functions of the CIR were defined under Section 4, Chapter II of CA 103, as follows:

> **Sec. 4. Strikes and Lockouts.** - The Court shall take cognizance for purposes of prevention, arbitration, decision and settlement, of any industrial or agricultural dispute causing or likely to cause a strike or lockout, arising from differences as regards wages, shares or compensation, hours of labor or conditions of tenancy or employment, between employers and employees, laborers tenants or farm laborers, provided that the number of employees, laborer or tenants or farm-laborers involved exceeds thirty, and such industrial or agricultural dispute is submitted to the Court by the Secretary of Labor or by any or both of the parties to the controversy and certified by the Secretary of Labor as existing and proper to be dealt with by the Court for the sake of public interest. . .

Commonwealth Act 103 was the State's direct response to the increasing number of workers' struggles, particularly the mounting of insurgency in the rice haciendas and sugar plantations.[17]

The statute was silent on voluntary arbitration, though it gave implied recognition to conciliation and mediation, to wit:

> **Sec. 4.** … The Court shall, before hearing the dispute and in the course of such hearing, endeavor to reconcile the parties and induce them to settle the dispute by amicable agreement. If any agreement as to the whole or any part of the dispute is arrived at by the parties, a memorandum of its terms shall be made in writing, signed and acknowledged by the parties thereto before the Judge of the Court or any official acting in his behalf and authorized to administer oaths or acknowledgements, or before a notary public. The memorandum shall be filed in the office of the Clerk of the Court, and unless otherwise ordered by the Court, shall as between the parties to the agreement, have the same effect, and be deemed to be, a decision or award.[18]

Suffice it to state that the CIR record was dismal. Delay in settling labor disputes further aggravated the dissatisfaction of the workers over their conditions, as the law could not contain both organized and spontaneous strikes.[19] The adjudicatory system suffered from protracted delays in the disposition of cases, which led to the clogging of case dockets.

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[15] Commonwealth Act 103, Approved on 29 October 1936: An Act to Afford Protection of Labor by Creating a Court of Industrial Relations Empowered to Fix Minimum Wages for Laborers and Maximum Rentals to be Paid by Tenants, and to Enforce Compulsory Arbitration between Employees or Landlords, and Employees or Tenants, Respectively; and By Prescribing Penalties for the Violation of Its Orders.

[16] Eduvala, George and Torres, Ruben, 1977, "Labor Relations Policy and the Labor Movement", *Philippine Labor Review*, Manila, p.4.

[17] Ibid.

[18] Par. 2, Section 4, Chapter II, Commonwealth Act 103.

[19] Atienza, Alfonso C. 2000, Voluntary Arbitration and Collective Bargaining in the Philippines, p.3.

E. REPUBLIC ACT 875 (1953)[20]

Legislators realized that the compulsory arbitration system could not settle all labor-management disputes. Hence, they reviewed the Philippine industrial relations system in relation to various national policies. ILO Convention No. 98[21] and the reported successes of the American labor relations system were considered. Congress agreed to adopt the policy that lasting peace is achieved when parties are able to directly work out the terms of settlement of the dispute by themselves,[22] or through a mutually selected third-party neutral.

Congress enacted Republic Act 875, otherwise known as the Magna Carta of Labor or the Industrial Peace Act of 1953. This new piece of legislation shifted the emphasis of labor relations policy from compulsory arbitration to collective bargaining.

Collective bargaining was meant to eliminate the causes of industrial unrest,[23] as well as promote sound, stable industrial peace and the advancement of the general welfare, health and safety and the best interests of employers and employees.[24] The law also advanced the importance of settlement of issues through conciliation and mediation, as an extension of collective bargaining,[25] along with expeditious methods of collective bargaining.[26] Two emphasized aspects were the making of the agreement or contract negotiations,[27] and maintenance of the agreement through grievance handling.[28] Section 16 read:

> **Sec. 16.** Administration of Agreement and Handling of Grievances. - The parties to collective bargaining agreement shall endeavor to include in their agreement provisions to insure mutual observance of the terms and stipulations of the agreement and to establish machinery for the adjustment of grievances, including question that may arise from the application or interpretation of the collective agreement ore from day-to-day relationships in the establishment.[29]

As RA 875 recognized the workers' right to strike, the conciliation service[30] was tasked to conduct labor-management conferences[31] and establish an Advisory Labor-Management Council[32] to promote industrial peace and voluntary adjustment of disputes.

The collective bargaining framework restricted the compulsory arbitration powers of the Court of Industrial Relations, as it was divested of vast powers to set wages, hours of work,

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[20] Republic Act 875, Approved on 17 June 1953: An Act to Promote Industrial Peace and For Other Purposes.
[21] Relates to the Application of the Principles of the Right to Organize and to Bargain Collectively.
[22] Explanatory Note of House Bill No. 825 which later became RA 875.
[23] Section 1(a), Republic Act 875.
[24] Section 1(b), Republic Act 875.
[25] Section 1(c), Republic Act 875.
[26] Section 1(d), Republic Act 875.
[27] Section 13, Republic Act 875.
[28] Section 16, Republic Act 875.
[29] Ibid.
[30] Section 18, Republic Act 875.
[31] Section 20, Republic Act 875.
[32] Section 21, Republic Act 875.

rates of pay, other terms and conditions of employment or regulation of relations between employers and employees, except in disputes involving industries indispensable to the national interest.[33]

Implicit in the law is the recognition that real industrial peace cannot be achieved by compulsion of law, and that sound and stable industrial relations must rest on a voluntary and bilateral basis. Thus, it upheld the principle of voluntarism and broadened the base of industrial democratic structures.

With an expanding industrial sector, hundreds of new unions with respective collective bargaining agreements (CBAs) were registered in the 1950s and 1960s. A free collective bargaining system was institutionalized.

F. PRESIDENTIAL DECREE NO. 21 (1972)[34]

With the advent of Martial Law, serious attempts were made to establish voluntary arbitration in Philippine labor relations policy. To cushion the impact of the strike ban in "vital industries", Presidential Decree No. 21 was issued creating the three-man National Labor Relations Commission, which exercised original jurisdiction over all labor disputes.

More importantly, P.D. 21 emphasized voluntary arbitration, to wit:

1) The grievance procedure installed as a mandatory initial stage in the settlement of disputes;[35]
2) Before assuming jurisdiction over any issue, dispute or grievance, the Commission shall give the parties a chance to submit the controversy to a voluntary arbitrator;[36]
3) All collective bargaining agreements shall have a provision designating a voluntary arbitrator to decide on all disputes arising from the interpretation and implementation thereof;[37] and
4) The clearance requirement for dismissal and termination of employees with at least one year of service.[38]

The mandatory *g*rievance procedure and voluntary arbitration became the established mode of dispute settlement. This policy arose out of the virtual ban on all strikes by virtue of General Order No. 5. Then President Ferdinand Marcos must have felt the need to arrest the workers' apprehension that martial law would violate or diminish their rights, and that protection and promotion of their interests would be diluted. Voluntary arbitration was thus highlighted as a mode of dispute settlement under Presidential Decree No. 21, to indicate that the workers and employers still have the means to directly participate in the resolution of

[33] Section 10, Republic Act 875.
[34] Presidential Decree No. 21, Approved on 14 October 1972: Creating a National Labor Relations Commission and For Other Purposes.
[35] Section 3, Presidential Decree No. 21.
[36] Section 4, Presidential Decree No. 21.
[37] Section 6, Presidential Decree No. 21.
[38] Section 11, Presidential Decree No. 21.

their controversies. Hence, the policy of promoting collective bargaining was maintained within the framework of compulsory arbitration. This helped provide the momentum for the speedy disposition of labor cases.[39]

Other developments encouraged the private sector to join hands with the government in promoting voluntary arbitration, culminating in the formation of two associations, namely the Arbitration Association of the Philippines (AAP) and the Philippine Academy of Professional Arbitrators (PAPA).[40]

The tripartite committee on arbitration headed by then Minister of Labor and Employment Blas F. Ople also conducted a twelve-day seminar on voluntary arbitration. Immediately thereafter, Department Order No. 12 was issued containing a list of some 112 accredited voluntary arbitrators (later expanded to 202). The rules governing voluntary arbitration were also issued to serve as guidelines in the conduct of voluntary arbitration proceedings.

G. 1973 CONSTITUTION

The 1973 Constitution enshrined a state policy on labor arbitration, which emphasized, among others, the right to self-organization and collective bargaining and the authority of the State to provide for compulsory arbitration. Thus, Section 9, Art. II on the Declaration and Principles and State Policies, stated:

> The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relation between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration.

With the experience under Presidential Decree 21 indicating effectiveness and usefulness of voluntary arbitration, there was no reason to depart from the policy and law on labor arbitration.[41]

H. PRESIDENTIAL DECREE 442 (1974)[42]

Proceeding from the mandate of the 1973 Constitution, the 1974 Labor Code integrated free collective bargaining, voluntary arbitration and compulsory arbitration.

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[39] Noriel, Carmelo T. 1988, *"Voluntary and Compulsory Arbitration of Labour Disputes in the Philippines",* A Survey of the Current Situation in ASEAN, ILO-Switzerland, p.35.
[40] Atienza, op. cit.
[41] Noriel, op cit. p.35.
[42] Presidential Decree 442, Approved on 1 May 1974, A Decree Instituting a Labor Code, Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice.

Book V of the Labor Code on Labor relations included the following significant provisions:

- Primacy of free collective bargaining;
- Free trade unionism as an agent of democracy, social justice and development;
- Parties shall include in the collective agreement an adequate administrative machinery for the expeditious settlement of labor disputes and to ensure mutual observance of the terms and conditions thereof;
- A broader scope and coverage of disputes to include disciplinary actions and termination cases of workers covered by a CBA;
- Parties shall thresh out all disputes and grievances arising from the interpretation and implementation of CBA in accordance with the grievance procedure provided in the CBA, and any unsettled grievances shall be submitted to voluntary arbitration;
- Advance designation of arbitrator/s or a selection procedure provision in the CBA;
- The Labor Arbiter or the BLR shall not entertain such disputes cognizable by grievance procedure and voluntary arbitration; and
- Voluntary Arbitration awards or decisions are final, executory and inappealable.

The voluntary arbitration program of the Department of Labor and Employment suffered an acceptability problem. Most labor relations practitioners opted to submit their cases to compulsory arbitration or to include grievable and arbitrable issues in notices of strikes, despite the professed advantages of voluntary arbitration.

In 1978, then Bureau of Labor Relations (BLR) Director Carmelo C. Noriel noted that only 3 percent of the total number of cases cognizable by voluntary arbitrators were brought to voluntary arbitration, with the rest submitted to compulsory arbitration.

Labor legislation reflects the desire of the State to protect workers' rights and uphold speedy labor justice. Though government desired to prove the efficacy of voluntary modes of settling disputes over confrontational approaches between labor and management, state policies issued one after another in span of months may have been detrimental to the voluntary arbitration program. Such a vacillating approach may have confused the public and undermined program acceptability.

The table below summarizes the amendments to the grievance machinery and voluntary arbitration provisions during this period.

Legislation/ Issuance	**Amendments**	
	Grievance Machinery	**Voluntary Arbitration**
PD 442 (1 May 1974)	Art. 309. All disputes, grievances or matters arising from the interpretation and implementation of collective agreement shall be threshed out in accordance with the grievance procedure.	Art. 310. Disputes, grievances or matters not settled through the grievance procedure shall be referred to and decided or settled through the prescribed voluntary arbitration procedure in the CBA.

Legislation/ Issuance	**Amendments**	
	Grievance Machinery	**Voluntary Arbitration**
		Every CBA shall designate in advance an arbitrator or panel of arbitrators or include a provision in making the selection of such arbitrator or panel of arbitrators definite and certain when the need arises. The arbitrator or panel of arbitrators shall have exclusive and original jurisdiction over all disputes, grievances or matters arising from the implementation or interpretation of a CBA after going through the grievance procedure. The Labor Arbiter or the Bureau shall not entertain such disputes, grievances or matters. Voluntary Arbitration awards or decisions shall be final inappealable and executory.
PD 570-A (1 Nov 1974)	Renumbered as Art. 311. Provisions maintained.	Renumbered as Art. 312. First two paragraphs maintained. <u>Inserted the following new provisions:</u> However, voluntary arbitration awards or decisions on money claims involving an amount exceeding P100 Thousand or 40% of the paid up capital of respondent employer, whichever is lower, may be appealed to the NLRC on the following grounds: a) abuse of discretion; and b) gross incompetence (Art. 312)
Presidential Decree 823 (3 Nov 1975)		Totally banned strikes but encouraged trade unionism and collective bargaining within the framework of compulsory and voluntary arbitration. (Sec. 1) Where disputes have not been resolved by the Regional offices, BLR, NLRC and voluntary arbitrators, within the reglamentary period, the Secretary of Labor shall assume jurisdiction and summarily decide such dispute which poses an emergency or is critical to the national interest … (Sec. 10)

Legislation/ Issuance	**Amendments**	
	Grievance Machinery	**Voluntary Arbitration**
PD 850 (16 Dec 1975)	Presidential Decree 850 transferred the jurisdiction of termination disputes to the Regional Directors and removed from the original and exclusive jurisdiction of grievance machinery and voluntary arbitrators, termination cases in companies where there are existing collective bargaining agreements. Art. 261 is amended: Except as otherwise provided in paragraph (b) of Article 267 of this Code, all disputes, grievances or matters arising from the implementation or interpretation of a collective agreement shall be threshed out in accordance with the grievance procedure provided for in such agreement. Art. 267(b). With or without collective agreement, no employer may shut down his establishment or dismiss or terminate the employment of employees with at least one year of service during the last 2 years, whether such service is continuous or broken, without prior written authority issued in accordance with such rules and regulation as the Secretary of Labor may promulgate.	Art. 262 is amended: All disputes, grievances and matters referred to in the immediately preceding Article which are not settled through the grievance procedure provided in the CBA shall be referred for voluntary arbitration prescribed in said agreement. Every CBA shall designate in advance an arbitrator … from the list provided by the Bureau of definite and certain when the need arises. Such arbitrator shall have exclusive and original jurisdiction to hear and decide disputes, grievances or matters arising from the implementation or interpretation of a CBA which have gone through the grievance procedure. (underscoring supplied) The Labor Arbiter or the Bureau shall not entertain such disputes, grievances or matters and any decision of the Labor Arbiter or the Bureau concerning such dispute shall be null and void as in excess of jurisdiction. Voluntary Arbitration awards or decisions shall be final inappealable and executory. However, voluntary arbitration awards or decisions on money claims involving an amount exceeding P100 Thousand or 40% of the paid up capital of respondent employer, whichever is lower, may be appealed to the Commission on the ground abuse of discretion or gross incompetence (Art. 262)
Policy Instructions No. 14 (23 April 1976)		Termination cases with or without CBA are now placed under the jurisdiction of the Regional Director. Preventive Mediation cases, now cognizable for the first time, are also placed under the Regional Director.
Policy Instructions No. 28	Clarifications on the following were issued:	Interest Disputes

Legislation/ Issuance	**Amendments**	
	Grievance Machinery	**Voluntary Arbitration**
(1 Sept 1977)	Termination cases 1) Encourage submission of the case to voluntary arbitration if: a) There is an *opposition* to an application for clearance to terminate or suspend an employee f*iled*, b) the Regional Director finds that the case *does not* suit summary investigation or c) the case *involves* intricate questions of law 2) The Regional Director shall certify the case to the NLRC a) if the parties indicate preference for compulsory arbitration or b) if they refuse or fail to submit the case to voluntary arbitration.	Parties may submit to voluntary arbitration in the ff: ▪ Deadlocks in collective bargaining where conciliation fails ▪ In cases involving an amount in excess of P100,000.00 or 40% of the paid-up capital of the employer, if expressly and clearly so indicated in the agreement of the parties All other disputes May be brought to voluntary arbitration, upon agreement of the parties. (underscoring supplied)
Policy Instruction No. 26 (07 June 1977)	Establishment of grievance machinery in private educational institutions ▪ By agreement of labor and management if there is a union; ▪ By management after consultation with the employees, if there is no union.	Voluntary arbitration shall be used to settle ▪ disputes involving interpretations and applications of administrative rules and regulations, provisions of existing CBAs, laws and regulations and ▪ Such other disputes upon agreement of the parties
PD 1691 (1 May 1980)	Art. 262 is Amended All disputes, grievances or matters arising from the implementation or interpretation of collective bargaining agreements, including all matters concerning disciplinary action imposed or to be imposed on members of the contracting union, shall be threshed out in accordance with the grievance procedure provided in such agreement. Where there is no collective bargaining agreement and in cases where the grievance as provided therein does not apply, all such matters should be subject to conciliation and arbitration as provided elsewhere in this Code. (underscoring supplied)	
Batas Pambansa	Art. 262 was amended:	Art. 263 was amended:

Legislation/ Issuance	**Amendments**	
	Grievance Machinery	**Voluntary Arbitration**
Bilang 130 (21 August 1981)	Whenever a grievance arises from the interpretation or implementation of a collective agreement, including disciplinary actions imposed on members of the bargaining unit, the employer and the bargaining representative shall meet to adjust the grievance. Where there is no collective agreement and the grievance procedure as provided herein does not apply, grievances shall be subject to negotiation, to conciliation or arbitration as provided elsewhere in this Code. (Art. 262)	All grievances referred to in the immediately preceding Article which are not settled through the grievance procedure provided in the collective agreement shall be referred to voluntary arbitration prescribed in said agreement: Provided, that termination disputes shall be governed by Art. 278 of this Code, as amended, unless the parties agree to submit them to voluntary arbitration. Every CBA shall designate in advance an arbitrator . . . chosen by the parties or include provisions on the procedure for the selection of such arbitrator or panel or panel of arbitrators. The Ministry shall compile a list of qualified arbitrate and make the same available to parties. Such arbitrator shall have exclusive and original jurisdiction to hear and decide all unsettled grievances referred to in the immediately preceding paragraph. Voluntary Arbitration awards or decisions shall be final inappealable and executory. (underscoring supplied)

I. THE 1987 CONSTITUTION

The best aspirational statement pertaining to sound labor-management relations is lodged in Section 3, Article XIII (Social Justice and Human Rights) of the 1987 Constitution, which states:

> The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
>
> It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
>
> The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

> The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth. (underscoring supplied)

Taking into consideration Filipino cultural values and usual modes of conduct when confronted with disunities and disagreements, the 1987 Constitution expressly acknowledges conciliation as a key mode of settling labor disputes.

Section 3, Article XIII are the declared State policies on labor which established the constitutional framework for labor administration and labor relations in the Philippines. The constitutional provision likewise provides a new policy framework for the development of a more cooperative labor relations policy that balances the rights of workers and employers, most notably through the principle of shared responsibility. The provision also recognizes the right of labor to its just share in the fruits of production and the right of the enterprise to the reasonable returns on investments and expansion and growth.

The state policies likewise stress the preferential use of voluntary modes in settling labor disputes. The objective is to prevent strikes and confrontation by creating a cooperative labor relations climate that will render the use of naked economic warfare unnecessary, with direct or bilateral negotiations between the parties as the preferred mode of settling workplace disputes.

J. REPUBLIC ACT 6715 (1989)[43]

Republic Act No. 6715, otherwise known as the Herrera-Veloso Law, amended the Labor Code and declared the following thrusts in labor relations:

> . . . to promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation, as modes of settling labor or industrial disputes" and . . . to provide an adequate administrative machinery for the expeditious settlement of labor or industrial disputes.[44] (underscoring supplied)

In line with the constitutional mandate, the law made collective bargaining and voluntary arbitration the centerpiece of labor relations. It also strengthened the voluntary arbitration framework in terms of jurisdiction, the final and executory nature of a decision/award, and the creation of a Special Voluntary Arbitration Fund (SVAF) from where arbitration fees are subsidized.

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[43] Republic Act 6715, Approved on March 21, 1989: An Act To Extent Protection To Labor, Strengthen The Constitutional Rights Of Workers To Self-Organization, Collective Bargaining And Peaceful Concerted Activities, Foster Industrial Peace And Harmony, Promote The Preferential Use Of Voluntary Modes Of Settling Labor Disputes, And Reorganize The National Labor Relations Commission, Amending For These Purposes Certain Provisions Of Presidential Decree No. 442, As Amended, Otherwise Known As The Labor Code Of The Philippines, Appropriating Funds Therefor And For Other Purposes.

[44] Articles 211(a) and (e), Republic Act 6715.

There was a shift from compulsory to voluntary arbitration in line with the principle of shared responsibility between workers and employers and the preferential use of voluntary modes of settling disputes. The parties are expected to settle disputes through the extensive use of negotiations, grievance machinery consultations, and labor management cooperation, conciliation and voluntary arbitration.

The law provides for the mandatory use of the grievance machinery (GM) as a prerequisite step to voluntary arbitration of disputes arising from CBA interpretation and implementation and those arising from enforcement and interpretation of company policies. [45]

Other features of the law include:

- Mandatory submission of unresolved grievances to voluntary arbitration within seven (7) days from the submission to the last step of the grievance machinery;[46]
- Ordinary CBA violations are treated as grievances;[47]
- Clear authority of the DOLE adjudicatory agencies and officials to dispose grievances filed before them and refer the same to the GM or VA;[48]
- Concurrent jurisdiction of voluntary arbitrators over ULPs and bargaining deadlocks, upon agreement of the parties;[49]
- Clear authority of voluntary arbitrators to conciliate;[50]
- Mandatory provisions to decide within twenty (20) days from submission of the dispute voluntary arbitration, unless parties agree otherwise;[51]
- Authority to issue a writ of execution on the part of arbitrators;[52]
- Concurrent jurisdiction of voluntary arbitrators over national interest cases, upon submission by the parties;[53] and
- CBA registration fee of P1,000 shall accrue to the Special Voluntary Arbitration Fund.[54]

Legislation and policy after the promulgation of RA 6715 dealt with the expansion and elaboration of jurisdiction of voluntary arbitrators. After all, voluntary arbitration needs to keep pace with the changing world and to continuously evolve into a more responsive system capable of resolving even the most complex labor disputes. These laws and policy thrusts have been summarized as follows:

[45] Art. 260, Republic Act 6715.
[46] Art. 260, par. 2, Republic Act 6715.
[47] Art. 261, par. 1, Republic Act 6715.
[48] Art. 261, par. 2, Republic Act 6715.
[49] Art. 262, Republic Act 6715.
[50] Art. 262-A, par. 1, Republic Act 6715
[51] Art. 262-A, par. 3, Republic Act 6715.
[52] Art. 262-A par. 5, Republic Act 6715.
[53] Art. 263 (h), Republic Act 6715.
[54] Art. 277 (f), Republic Act 6715.

Legislation/Issuance	Amendment/Development
Republic Act 6727 (9 June 1989)	Wage Distortions arising from Wage Orders
Republic Act 6971 (22 November 1990**)**	Interpretation or Implementation of Productivity Incentive Program (Sec. 9)
Policy Instruction No. 56 (6 April 1993)	Termination disputes filed at the NLRC which are not processed at the grievance procedure
Free Legal Aid and Voluntary Arbitration Services Program (1993)	Establishment of NCMB Guidelines to govern administration of the Free Legal Aid Program and extending the benefits of voluntary arbitration to the non-unionized and unorganized sector. The program caters to cases which are normally submitted to the NLRC such as those involving individual workers (dismissals, money claims, etc)
Department Order No. 09-97 (1 May 1997)	Amended the Implementing Rules of Book V of the Labor Code, as amended ▪ Included a provision for the establishment of a grievance machinery; ▪ Provided for the creation of a grievance committee in the absence of an applicable provision in the CBA; and ▪ Provided a default grievance procedure in case of absence of specific provision in the CBA.
Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (2000)	Section 29. Dispute Settlement Procedures In cases of claims and disputes arising from this employment, the parties covered by a collective bargaining agreement shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators. If the parties are not covered by a collective bargaining agreement, the parties at their option submit the claim or dispute to either the original and exclusive jurisdiction of the National Labor Relations Commission (NLRC), pursuant to Republic Act (RA) 8042 otherwise known as the Migrant workers and Overseas Filipinos Act of 1995 or to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators. If there is no provision as to the accredited voluntary arbitrators of the National Conciliation and Mediation Board of the Department of Labor and Employment.
Department Order No. 40-03 (17 February 2003)	Consolidated the provisions of RAs 6715, 6727 and 6971 on the jurisdiction of voluntary arbitration with the inclusion of the mechanism known as the principle of notice to arbitrate.

III. The Constitutional Framework on Voluntary Arbitration

The 1935 Constitution	The 1973 Constitution	The 1987 Constitution
The state shall afford protection to labor, especially to working women and minors, regulating the relations between landowner and tenant, and between labor	. . . The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may	The state shall promote the principle of shared responsibility between the workers and the employers and the preferential use of voluntary modes in settling disputes including

The 1935 Constitution	The 1973 Constitution	The 1987 Constitution
and capital in industry and agriculture. The State may provide for compulsory arbitration. (Sec. 6, Art. XIV) (underscoring supplied)	provide for compulsory arbitration. (Section 9, Art. II, Declaration of Principles and State Policies) (underscoring supplied)	conciliation, and shall enforce their mutual compliance therewith to foster industrial peace. (Sec. 3, Art. XIII Social Justice provisions on Labor) (underscoring supplied)

The 1987 Constitution expressly prioritizes voluntary modes of settling disputes, with the provision on compulsory arbitration omitted for the first time.

During 2 August 1986 deliberations in the Constitutional Commission, Commissioner Ma Teresa F. Nieva explained that in all of the public hearings held by the Committee on Social Justice, labor and management groups were very firm in ruling out compulsory arbitration. The partners felt they should be left free without government interference in deciding labor disputes.[55] Commissioner Monsod further explained that this did not mean that the function of the State in regulating relations between labor and management would not apply when he stated: "The State is always there but the settlement of disputes should be made to the extent possible and to all the rights available to labor and management. Therefore, it should be through voluntary means and the rights available to labor should be given, such as the right to strike".[56]

Commissioner Felicitas S. Aquino specified the procedure envisioned by the Committee on voluntary modes of dispute settlement:

> First, the primary focus of settling labor and management conflict is through the voluntary modes of settling disputes. We first avail of the grievance procedures that are usually provided in the collective bargaining agreement. In the absence of a CBA, they are usually provided in the internal rules and regulations of the company. Then we avail of the conciliation proceedings, which is part and parcel of the voluntary modes of settling disputes usually under the guidance of the Ministry of Labor.
>
> In the 1973 Constitution, there is a specific proviso for compulsory arbitration. As has been previously cited by the Committee Chairman, there is an overwhelming reaction against a specific mandate for compulsory arbitration. Even the management sector is very reluctant in reinstating the same formula in this Constitution, such that we attempted to incorporate in the committee report the phrase "promote voluntary modes of settling disputes", the idea is to focus primarily on the voluntary modes of settling disputes rather than to preempt the procedures of settling management and labor conflict through compulsory arbitration. We very well know that the effect of compulsory arbitration is that any labor-management conflict is immediately certified by the National Labor Relations Commission, and that if there is an impending strike, automatically, by compulsory mandate of the law and upon the certification, the strike would have to be lifted. Both labor and management are in confluence in terms of their position that all disputes should first be approached by exhausting voluntary modes. This does not preclude,

[55] Record of the Constitutional Commission, Volume 2, p. 609.
[56] Ibid.

> however, Congress from providing for statutory implementation of other modes of settling disputes.[57]

It is clear that "dropping of compulsory arbitration" was a reiteration of the genuine and firm commitment of the State to encourage and reinforce collective bargaining and voluntary modes of settling labor disputes. The Committee intended to delete the provision on compulsory arbitration to facilitate harmonization of interests, provided that the express provision on voluntary modes does not exclude the right of the State to provide for compulsory arbitration in situations where it may be warranted, such as when there is a threat to national interest and welfare. Commissioner Aquino explained that the reservation for compulsory arbitration and the power of the government to intervene should lie only as a last resort when free collective and voluntary modes shall have been exhausted and proven unavailing in settling labor disputes.[58]

In order to carry out the mandate of the 1987 Constitution, specific responses were undertaken by the government to promote the primacy of voluntary modes of dispute settlement. These responses consisted of the following:

1) Creation of the National Conciliation and Mediation Board (NCMB) under Executive Order No. 126 dated 30 January 1987 to promote voluntary arbitration;

2) Establishment of the Tripartite Voluntary Arbitration Advisory Council (TVAAC), attached to the NCMB to provide policy advice on matters pertaining to promotion of voluntary arbitration;

3) Improvement of the legal framework for voluntary arbitration through the passage of Republic Act No. 6715 on March 1989, which introduced significant amendments to the Labor Code pertaining to grievance settlement and voluntary arbitration;

4) Administration of a Special Voluntary Arbitration Fund (SVAF) to subsidize the costs of voluntary arbitration and finance operations of the TVAAC, the training and education of voluntary arbitrators, and the development of a comprehensive voluntary arbitration program.

IV. The Statutory Framework under the Labor Code

A. JURISDICTIONS OF VOLUNTARY ARBITRATORS

Republic Act 6715 amended the Labor Code and expanded the original and exclusive jurisdiction of voluntary arbitrators to include unresolved grievances arising from the interpretation and enforcement of personnel policy.

[57] Record of the Constitutional Commission, Volume 2, p. 610.
[58] Ibid., p. 667.

1. First Area

Article 261 of the Labor Code provides the exclusive and original jurisdiction of voluntary arbitrators over the following:

1) All unresolved grievances arising from the interpretation or implementation of the collective bargaining agreement;
2) Those arising from the interpretation or enforcement of company personnel policies, as referred to in Art. 260; and
3) Violations of the collective bargaining agreement which are not gross in character.

The first group refers to grievances arising from CBA interpretation and implementation, which is the traditional domain of voluntary arbitrators.

The second group of grievances refer to company personnel policies. According to Senator Ernesto Herrera, the implementation of company personnel policies is one of the causes of labor-management "irritance", and should therefore be the proper subject of the grievance machinery.[59] This contemplates situations where workers are not satisfied with the decision of management in the implementation of its policies, in which case workers have recourse to file a grievance. Moreover, this also contemplates a situation where there is an actual disciplinary action pursuant to these personnel policies before it becomes an arbitrable grievance.[60]

Senator Herrera also explained that there is a labor-management council apart from the grievance machinery. In most cases, employers will always submit to the labor management council if they would like to adopt certain personnel policies in order to avoid problems in the implementation of these policies.[61] He explained:

> What will happen is that we will have these two schemes: the labor management council which is normally, more of a preventive measure and we have the grievance machinery, when there is already the occurrence of a grievance that they can thresh out their problems.

The third group of grievances refer to ordinary violations of CBAs. The provision is categorical in stating that CBA violations, except those gross in character, shall no longer be treated as unfair labor practices, but as grievances under the CBA. "Gross CBA violations" would mean flagrant and/or malicious refusal to comply with the economic provisions of the CBA.

During deliberations on then Senate Bill 530, Senator Angara said that the "purpose of the amendment is to really concentrate to defining what is gross violation of the collective agreement". The principle behind the whole provision is "to give an expanded jurisdiction to voluntary arbitrators so that any violation of the CBA, if not gross, will be subject to arbitration rather than industrial strike."[62]

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[59] Interpellations on Senate Bill 530, Record of the Senate, Vol. I. No. 163-A, p. 5640.
[60] Ibid., p. 5641
[61] Ibid.
[62] Committee Amendments on Senate Bill 530, Record of the Senate Vol. I, No. 165., p. 5714.

It was clarified that gross violations of the CBA to be unfair labor practices must be flagrant and/or malicious non-compliance with economic benefits, such as wage increase provisions in agreements. Violations involving non-economic benefits do not fall under Articles 248 and 249 and are therefore cognizable under the grievance machinery. [63]

The intention of the provision is to speed up processing of grievances and increase resort to bilateral mechanisms and promote industrial peace. The legislators realized the prevailing practice of labor and management to bypass voluntary arbitration as the last step in the grievance procedure, and instead bring their unresolved grievances directly to labor arbiters through a complaint or to conciliator-mediators through a notice of strike or lockout. Senator Herrera explained that it normally takes six months to one year to settle a dispute arising from misinterpretation of CBAs.[64]

> That's why dito... gross violation, otherwise panay ang strike. Iyan ang purpose diyan eh. Pag hindi mo inilagay ang gross violation lang, eh iyong ULP ground for strike iyan eh. Panay ang strike, kahit it is an honest minsinterpretation of the CBA. Pero noon naman, siguradong non-payment of economic benefits, gross talaga iyon.[65]

If grievance handling and voluntary arbitration are made efficiently and effectively functional, potential strike cases could ease up. The usual practice of adding unresolved grievances to fan an already volatile strike situation is negated by directing the parties' attention to the grievance machinery and voluntary arbitration as better alternatives to industrial action.

2. Second Area

Article 262 relates to the jurisdiction of voluntary arbitrators, upon agreement of the parties, to hear and decide all other issues including unfair labor practice and collective bargaining deadlocks.

The intention of the framers is to provide a clear opportunity for settlement. If parties will agree to settle and discuss the issues through voluntary arbitration, then they should not be denied such an opportunity, even if the case has commenced compulsory arbitration proceedings. Hence, any issue can be submitted to voluntary arbitration for as long as the parties agree and are willing to provide the chance to resolve the dispute through voluntary means.

Under this set-up, the parties may agree to submit any or all kinds of disputes to voluntary arbitration. This includes cases under the jurisdiction of the NLRC and disputes involving industries indispensable to the national interest under the Secretary of Labor and Employment's assumption and certification power pursuant to Article 263 (g).

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[63] Joint Congressional Conference Committee Report on Senate Bill 530 and House Bill 11524, 15 December 1988, p. 83.
[64] Senate Proceedings on Senate Bill 530, June 2-3, 1988, p. 2195.
[65] Joint Congressional Conference Committee Report, op. cit. p. 83.

B. VOLUNTARY ARBITRATION PROCEDURES

Department Order No. 40-03, signed in 17 February 2003, amended the Rules Implementing Book V of the Labor Code.

Significant amendments of the Department Order include:

1) The remedies to deal with refusal to comply with the contractual commitments to submit to voluntary arbitration;
2) Reducing time resolution by eliminating the option to file a motion for reconsideration;
3) Sanctions for arbitrators who cannot comply with the mandated or agreed upon period within which to render a decision; and
4) The NCMB as repository of case records.

During the 7th National Convention on Voluntary Arbitration held in 2002, the issue on parties' refusal to submit to voluntary arbitration despite the existence of a CBA provision was heavily deliberated. Department Order No. 40-03 presents a solution through a notice to arbitrate issued by a willing party to the other party to the CBA. The NCMB can now appoint a voluntary arbitrator when one party refuses to comply with their contractual commitments in the CBA.

To reduce time resolution of cases, the new Department Order removes the option for parties to file a motion for reconsideration of a voluntary arbitration decision. This renders voluntary arbitration decisions and awards to be final and immediately executory.

Relative to periods of disposition, the new rules now provide a sanction for arbitrators who cannot render decisions within the twenty (20) calendar day period stipulated in the Labor Code. The sanctions shall be governed by the existing guidelines on delisting, last issued in 1999 by the Tripartite Voluntary Arbitration Advisory Council (TVAAC). Should the sanction be delisting, it shall be unlawful for the voluntary arbitrator not to turn over the records of the case to the NCMB for further disposition or assignment to another voluntary arbitrator.

The new rules attempt to address problems relative to the execution of decisions, orders and awards of voluntary arbitrators who become incapacitated, have died or become unavailable for any reason. The new rules made clear that in such situations, motions for execution shall be lodged before the Labor Arbiter.

The new rules also require all voluntary arbitrators to oblige parties to copy furnish the NCMB with copies of all pleadings submitted relative to a voluntary arbitration case, and to turn over the entire records of the case to the NCMB for record keeping, after satisfaction of the final arbitral award.

V. The State of Voluntary Arbitration

A. PROMOTIONAL EFFORTS

The National Conciliation and Mediation Board, in consultation with the Tripartite Voluntary Arbitration Council, formulated a multi-pronged approach that sought to increase the acceptability of voluntary arbitration to the parties. Since 1988, various efforts were undertaken by the Board. Its components may be summarized below, with particular themes obtaining for each period.

1988: Period of Assessment
An assessment of the state of voluntary arbitration through a survey was undertaken, which confirmed the conclusions of the Tripartite Review Committee on Labor Relations on factors hindering the use of voluntary arbitration, to wit:

- Lack of awareness
- Delays in case disposition
- Problems in the enforcement of arbitral awards
- Lack of competent and trustworthy arbitrators
- The year saw 74 cases, mostly handled by DOLE officials.

1989: Laying the Foundation
The legal framework of voluntary arbitration was strengthened with the passage of RA 6715. Towards achieving a broad consensus, a National Tripartite Conference Workshop and regional conferences were held resulting in inputs and the adoption of the following:

- Draft Rules implementing RA 6715
- Guidelines in the conduct of VA proceedings
- System for Accreditation of Arbitrators
- Code of Ethics of Accredited Voluntary Arbitrators
- Five-Year Plan on Voluntary Arbitration
    1) Accreditation of 111 PAPA and AAP members and individual applicants
    2) Conducted four (4) Institutes on Grievance Settlement and Voluntary Arbitration, resulting in the accreditation of 284 arbitrators
    3) Developed and produced information materials like the VA Journal, Basic Documents and the VA Primer
- Voluntary arbitration cases grew to 116.

1990: Strengthening the System and Generating Awareness
The First National Convention of Voluntary Arbitrators was held, which paved the way for the formation of a single national association of arbitrators. Various measures were proposed to strengthen voluntary arbitration:

- Tri-media campaign
- Networking with other sectors
- Distribution of directory of accredited voluntary arbitrators (AVAs)

- Amendments on jurisdiction in relation to termination cases
- Conduct of an in-depth study for voluntary arbitrators
- Eighty-nine (89) new voluntary arbitrators accredited
- Voluntary arbitration cases numbered 136.

1991: Generating More Awareness

The important activities undertaken for the year were:

- Tri-media campaign
- Incorporation of PAVA, Inc.
- Conduct of 25 area-wide seminars and 5 advocacy training seminars
- Establishment of VA Centers in Cebu, Davao, and Manila
- Holding of 2nd National Convention of AVAs
- Seven (7) arbitrators were accredited, while cases rose to 166.

1992: Continuing Campaign for Awareness

Tri-media campaign cut short by election period

- Completion of Professional Development Program for AVAs by Development Academy of the Philippines.
- Consultation with various sectors (labor group, employer group, maritime industry leaders) on use of voluntary arbitration
- Holding of Regional Convention in Baguio City
- Conduct of 18 area-wide seminars and 12 advocacy trainings
- Signing of the first Concord on Voluntary Arbitration
- MOA between the DOLE and the Office of the Solicitor General was forged, which formalized representations made by OSG to defend decisions of voluntary arbitrators before the Supreme Court
- Two (2) additional arbitrators were accredited.
- Voluntary arbitration cases down to 137.

1993: Further Strengthening the Campaign for Awareness

Continuing tri-media campaign

- Launching of the Free Legal Aid and Voluntary Arbitration Services Program (FLAVAS)
- Conduct of 17 area-wide seminars and 19 advocacy training seminars
- Holding of Visayas-Mindanao Convention on Voluntary Arbitration in Davao City
- Issuance of Policy Instruction No. 56, which clarified the jurisdiction of voluntary arbitrators and labor arbiters over termination cases
- A second accord on voluntary arbitration was signed with CLAMOR, PAVA, DOLE-NMYC and Apparel and the Textile Industry Board
- Conduct of two (2) specialized trainings benefiting 69 newly accredited VAs
- Establishment of local chapters of PAVA in different regional branches
- Holding of Pre-Accreditation Trainings in coordination with the UP Law Center, which accredited 149 new AVAs
- Voluntary arbitration cases rose to 250.

1994: Strengthening the Campaign for Awareness

Conduct of 11 area-wide seminars and 17 advocacy trainings

- Regular meetings with voluntary arbitrators and VA advocates nationwide
- Operationalization of the FLAVAS program
- Implementation of Policy Instruction No. 56
- Holding of the 3rd National Convention of AVAs in OSHC
- Launching of the Search for Outstanding Voluntary Arbitrators
- Accredited 36 VAs
- Voluntary arbitration rose to 289.

1995: Refocusing Thrusts

- Institutionalization of voluntary arbitration in the public sector through the conduct of seminar-workshops in coordination with the Civil Service Commission
- Conduct of week-long activities to celebrate voluntary arbitration week, January 25-31, 1995, which culminated in the awarding of 10 Outstanding Voluntary Arbitrators
- Training Program for Non-Lawyer AVAs in joint sponsorship with AAFLI, now the American Center for International Labor Solidarity (ACILS)
- Review of policies on accreditation and de-listing of AVAs, guidelines in the charges of fees, expedited VA procedures
- Drafting of VA Bill incorporating proposed amendments to the Labor Code
- Promulgation of the Luzon Development Bank case, equating decisions of Voluntary Arbitrators with those of RTC judges, thus giving the Court of Appeals concurrent appellate jurisdiction with the Supreme Court.
- Conduct of 34 area-wide seminars and 15 VA advocacy trainings
- Change of direction of promotional activities, focusing attention on strengthening grievance machineries
- Accreditation of 331 new AVAs
- Voluntary arbitration cases rose to 299.

1996:Strengthening participation of AVAs in Policy-Making Processes

Held the 4th National Convention of Accredited Voluntary Arbitrators at Apo View Hotel, Davao City

- TVAAC approved the following guidelines:
  1) Guidelines for accreditation and de-listing of AVAs
  2) Guidelines on expedited voluntary arbitration proceedings
  3) Revised guidelines on the processing and payment of subsidy entitlement
  4) Revised guidelines on FLAVAS subsidy
- Forged Memoranda of Agreement with the OSG to reaffirm its role in defending VA decisions and created a Task Force to represent AVAs before the Court of Appeals and the Supreme Court; and with the NLRC to strengthen tie-ups with the sheriff in executing decisions of AVAs
- Conducted 14 professionalization training seminars for voluntary arbitrators in 10 regional branches of the NCMB
- Active involvement and participation of voluntary arbitrators in VA-related activities
- Voluntary arbitration cases rose to 304.

1997: Active Involvement of PAVA in NCMB promotional activities

- Launching of PAVA Foundation, Inc. as the financial arm of PAVA, Inc.
- Establishment of NAVA as a research and training extension program of the PAVA
- Launching of the 2nd Search for Outstanding Voluntary Arbitrators
- Conducted 4 professionalization training programs for AVAs
- Conducted 5 training seminars on VA advocacy in joint sponsorship with AAFLI and TUCP
- Documentation of successful grievance machineries
- Very active involvement of PAVA in NCMB activities
- Voluntary arbitration cases dropped to 288.

1998: Enhancing the Acceptability of Voluntary Arbitration

Conducted consultation meetings among various sectors, collating views on how to further enhance acceptability of voluntary arbitration.

- Holding of the 5th National Convention on Voluntary Arbitration at Sugarland Hotel, Bacolod City
- Conducted 116 orientation programs and 66 skills training seminars
- Voluntary arbitration cases dropped further to 276.

1999: Refocusing on Plant-Level Mechanisms

The promotional efforts of the NCMB emphasized effective grievance handling

- Focused more on LMC facilitation and grievance machinery operationalization processes
- Greater focus on grievance settlement programs on dispute prone companies
- Establishments requiring greater involvement of conciliator-mediators identified
- Greater focus on organizational analysis to ensure proper intervention/ assistance in grievance settlement mechanisms or LMC facilitation
- Strengthened links with PAVA in order to generate the interest of AVAs and innovate programs on voluntary arbitration
- Forged MOA with the maritime sector to institutionalize voluntary arbitration in the maritime industry
- Conducted pre-accreditation training among maritime experts and voluntary arbitrators who would like to specialize in maritime disputes
- The TVAAC revised the guidelines on:
  1. The Processing and Payment of Subsidy Entitlement
  2. Expedited Voluntary Arbitration Proceedings
  3. Accreditation and De-accreditation of Voluntary Arbitrators
- Voluntary arbitration cases down to 204.

2000: Operationalization and Strengthening of Grievance Machineries (GMs)

Operationalization and enhancement processes were implemented

- Targeted reduction in the incidence of ULP cases in establishments with CBAs through proper functioning grievance machineries
- For identified non-functioning GMs, intervention by way of orientation and training

- For functioning GMs in need of assistance, intervention will be in the form of strengthening or enhancing effectiveness
- Held the 6th National Convention on Voluntary Arbitration in Cebu City
- Held post-accreditation activities for newly accredited maritime arbitrators
- Voluntary arbitration cases rose slightly to 212.

2001: Continuing Strategy to Strengthen Plant-level Mechanisms

- Forged MOA with Subic Bay Metropolitan Authority (SBMA)
- Held LMC-VA Facilitators' Training
- Voluntary arbitration cases down to 207.

2002: Back to Basics

- Streamlining of voluntary arbitration procedures
- Renewing close ties with networks, including the proposal to explore accreditation of trainings on VA by the Supreme Court (similar to the IBP continuing legal education program)
- Held the 7th National Convention on Voluntary Arbitration at Holiday Inn, Manila
- Cleansing the roll of AVAs to address problems relative to inactivity and disinterests, more importantly delays in disposition of cases
- Strengthen coordination with NLRC, as well as PAVA in the facilitation of case referrals from compulsory arbitration to voluntary arbitration
- Implementation of NCMB Guidelines on the Execution of VA Awards and Decisions
- Finalized the Survey on Grievance Machinery
- Developed the training module on Grievance Settlement
- Voluntary arbitration cases rose to 223.

2003: Rationalizing the Labor Dispute Resolution System

- Issuance of Department Order No. 40-03
- Implementation of the Survey on Grievance Machinery
- Held the Trainers' Training on LMC-Grievance settlement to pilot-test the Standardized Training Module on Grievance Settlement
- Revision of the Rules of Procedures or Procedural Guidelines in the Conduct of VA Proceedings to include amendments in DO 40-03
- Trimming down the list of active AVAs
- Strengthening ties with TVAAC, PAVA, NAVA, local VA associations, OSG, NLRC, POEA, etc.
- Voluntary Arbitration cases down to 175.

2004: More emphasis on effective plant-level grievance handling and promotion of cooperative and other non-adversarial schemes

Finalized the Revised Guidelines in the Conduct of Voluntary Arbitration Proceedings

- Strengthened roles of conciliator-mediators in the promotion of the three program areas of the NCMB
- Strengthened labor education programs involving the National Academy on Voluntary Arbitration
- Forged MOA with the DILG
- Strengthened partnerships with local associations

- Plant-level activities focused on LMC facilitation and GM operationalization processes
- Voluntary Arbitration cases down further to 152.

2005: Strengthening Voluntary Arbitration as an integral part of ADR

Expansion of the coverage of promotional activities to the unorganized sector

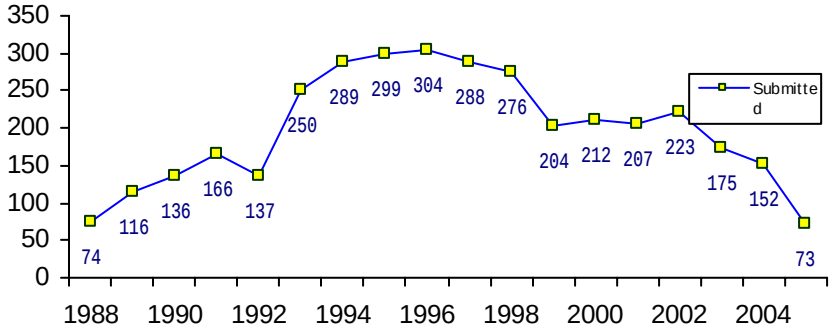
- Improvement of existing systems and procedures on voluntary arbitration
- Full implementation of "notice to arbitrate"
- Re-tooling of Voluntary Arbitrators
- Improvement of training modules and strategies
- Re-tooling of NCMB facilitators
- Accreditation of new arbitrators
- Renewing and re-affirming the commitment of long-time arbitrators
- Voluntary arbitration cases as of June at 73.

B. SUBMISSION OF CASES TO VOLUNTARY ARBITRATION

Since the NCMB's administration of the voluntary arbitration program, total cases submitted reached 3,581 or an average of 200 cases per year. From the dismal observation in 1978[66] that only approximately 3% of cases processed through voluntary arbitration were eventually resolved, or from only 229 cases compiled by the Bureau of Labor Relations in 8 years,[67] a turnaround occurred since the NCMB administered the VA program. Cases increased from 74 in 1988 to as high as 304 cases in 1996.

Like the filing of notices of strikes/lockouts and the number of unions and CBAs registered, there was a downward trend in voluntary arbitration cases beginning 1997. A sharp decrease of 26% was registered in 1999, as it stabilized to an average of 212 cases per year until 2002. Beginning 2003, cases submitted were below the 200 mark: 175 in 2003 and 152 last year. For the first half of 2005, VA case submission was only at 73, or three percent lower than the 75 cases submitted for the same period last year.

Fig. 1. Number of VA Cases (1988-June 2005)



[66] Noriel, op. cit. p. 39.
[67] Ibid.

Table 1. Summary of VA Cases Submitted and Disposed
1988-June 2005

Year	Pending, Beg.	New Cases	Total Cases	Cases Disposed	Disposition Rate	Pending, End
1988	0	**74**	74	38	51%	36
1989	36	**116**	152	92	61%	60
1990	60	**136**	196	123	63%	73
1991	73	**166**	239	132	55%	107
1992	107	**137**	244	161	66%	83
1993	83	**250**	333	199	60%	134
1994	134	**289**	423	287	68%	136
1995	136	**299**	435	299	69%	136
1996	136	**304**	440	**302**	69%	138
1997	138	**288**	426	**294**	69%	132
1998	132	**276**	408	**289**	71%	119
1999	119	**204**	323	**223**	69%	100
2000	100	**212**	312	**193**	62%	119
2001	119	**207**	326	**212**	65%	114
2002	114	**223**	337	**214**	64%	123
2003	123	**175**	298	**187**	63%	111
2004	111	**152**	263	**170**	65%	93
2005	93	**73**	166	**67**	40%	99
TOTAL	0	**3,581**	3,581	**3,482**	63%	99

A number of factors can explain this trend in VA case submission. The trend is reflective of external developments, in addition to the promotional efforts exerted by the NCMB as well as the support obtained from the government and other stakeholders.

1988-1994
The first six years of program administration were marked by massive awareness-raising and institution-building activities. The voluntary arbitration program was like a baby out of the womb showered with much attention and care. The program was given all the support from top to bottom. Indeed, a favorable policy and legal climate was mandated by no less than the Constitution.

Republic Act 6715 also provided all the supplements and nourishments that made voluntary arbitration a healthy infant. There was the special voluntary arbitration fund to finance the tri-media campaign, exposing the beauty of grievance handling and voluntary arbitration.

There was also an abundance of information materials, from directories to pamphlets. Everyone was curious to see what the program was all about. A number of labor and management practitioners and other stakeholders gave the program a chance, as they became "godparents" and fervent supporters. The organizations involved were the International Labour Organisation (ILO), American Center for International Labor Solidarity (ACILS, formerly the Asian American Free Labor Institute or AAFLI), the Employers Confederation

of the Philippines (ECOP), Philippine Chamber of Commerce and Industry (PCCI) and labor federations (TUCP, LACC, PDMP and other labor centers).

New voluntary arbitrators were trained and accredited under a centralized screening and training and development process. The roster was filled with arbitrators of competence and integrity.

During this period, the VA program faced challenges as well. In the election year of 1992, many endorsers and supporters of the program were politicians (Senator Ernesto Herrera, Congressman Alberto Veloso, Senator Blaas Ople, then DOLE Secretary Ruben Torres). Hence, the tri-media campaign was cut short and limitations were imposed upon the use of the budget, as part of the austerity measures of the government. Institution-building activities were a little less compared to previous years. Thereafter, case submission rose to a high of 250 in 1993. The NCMB continued to reap the fruits of earlier vigorous awareness campaign strategies. This was also the time when new programs were launched, such as the Free Legal Aid and Voluntary Arbitration Services Program (FLAVAS), which involved disputes from the organized and unorganized sectors. Policy Instruction No. 56 was also issued to clarify the jurisdiction of voluntary arbitrators in termination disputes.

A crucial development in 1994 necessitated the NCMB to plan anew. There was no Special Voluntary Arbitration Fund (SVAF) appropriated to the NCMB due to stringent and stricter policies at the Department of Budget and Management. The P15 Million Special Voluntary Arbitration Fund provided for in Art. 277(f) of the Labor Code, as amended, was just an authority to appropriate,[68] leaving no actual source of funds. Congress will still have to determine how much can be appropriated for the purpose.

The SVAF was introduced by RA 6715 to help parties defray the costs of VA proceedings. It was also intended to provide continuing education and training for employees, employers and voluntary arbitrators. The SVAF was not a special fund. It was a part of the regular appropriations of the NCMB, which was provided as a supplemental budget. This provision was provided in RA 6715 to give authority to Congress to set aside funds for the administration of the program.

For the SVAF, Congress appropriated P3.9 Million in 1989, P3.9 Million in 1990, P15 Million each in 1991, 1992 and 1993. Beginning 1994, there were no supplemental appropriations on SVAF provided to NCMB. Although these appropriations were provided, actual amounts released to the NCMB were smaller than appropriations. Table 2 provides the detailed breakdown of these appropriations to NCMB.

[68] Joint Congressional Conference Committee on SN 530 & HB 11524, December 14, 1988, p.2-4.

Table 2. Summary of NCMB Budget and Utilization (In Thousands)
1988-2004

YEAR	GAS	STO	SVAF	RBs	TOTAL	UTILIZATION	% UTILIZED	SVAF/ VA UTILIZATION	% UTILIZED	VA SUBSIDY
1989	528	379	50	7,349	8,306	8,212	99%	44	88%	
1990	835	329	2,774	6,842	10,780	9,382	87%	2,733	99%	14
1991	752	254	13,417	4,447	18,870	17,074	90%	10,497	78%	37
1992	1,246	603	12,321	5,155	19,325	18,156	94%	11,363	**92%**	204
1993	1,278	615	13,096	5,039	20,028	12,585	63%	5,806	44%	402
1994	3,823	9,172		13,256	26,251	19,650	75%	8,698	33%	575
1995	5,976	10,538		15,281	31,795	30,433	96%	13,899	44%	972
1996	5,826	7,917		19,967	33,710	33,568	100%	13,230	39%	1,430
1997	7,075	7,496		24,567	39,138	33,424	85%	11,056	28%	1,557
1998	6,913	7,455		19,107	33,475	28,537	85%	9,092	27%	1,062
1999	7,156	7,424		31,496	46,076	32,667	66%	8,907	3%	1,330
2000	8,378	7,556		30,142	46,076	32,990	72%	8,244	18%	1,072
2001	6,549	4,082		27,983	38,614	36,813	95%	6,928	18%	1,192
2002	5,145	3,020		23,523	31,688	31,072	98%	6,499	21%	1,129
2003	4,774	2,617		20,843	28,234	28,234	100%	6,331	22%	978
2004	5,158	3,022		23,776	31,956	30,482	95%	6,776	21%	846

The DBM required that to be entitled to the SVAF, the NCMB must be able to meet, if not surpass, the projections set for its critical indicators. The measure of success for the voluntary arbitration program was therefore anchored on the number of voluntary arbitration cases facilitated or monitored. Although the numbers were improving, accomplishments were so minimal to meet the projections.

These developments required the NCMB to undergo re-assessment of strategies to address gaps and concerns about the program.

1995-1998

The next four years (1995-1998) were a time to refocus policy thrusts. The NCMB went through a series of consultations among the Regional Branch Directors to redirect thrusts, considering that the number of cases handled under the program was not a good indicator of success. Other means to measure program impact were employed. The NCMB re-directed its promotional emphasis to making the grievance machinery work, considering fewer cases submitted to voluntary arbitration could mean the existence of functional grievance machineries. Among the strategies identified were the following:

1. Increasing the advocates of functioning grievance machineries and voluntary arbitration by involving actual players in grievance handling. Hence, associations of voluntary arbitration advocates were formed in all regional branches.

2. Decentralizing the accreditation of arbitrators to the regional branches to include labor-management practitioners (HR and IR practitioners). The purpose was to involve key players in the processing of grievances at the workplace.
3. Voluntary arbitrators were involved in program planning and implementation, thereby making them a significant part of the drive to further strengthen voluntary arbitration.

The strategy seemed to work at first, because cases surged as high as 304 in 1996. Also, the NCMB was also able to document a number of functioning GMs. The SVAF, however, was not appropriated and the budget for the voluntary arbitration program was deemed incorporated into the regular appropriations of the NCMB.

To augment budget deficiency in voluntary arbitration, the NCMB submitted a special budget to the DBM to utilize CBA fees collections for the purpose of setting up three (3) Voluntary Arbitration Centers, one each for Luzon, Visayas, and Mindanao. VA Centers served as multi-purpose venues for arbitrators to hold meetings and conferences. Books and copies of the Supreme Court Reports Annotated (SCRA) were provided to assist the arbitrators in writing their decisions. Moreover, additional temporary staff members were hired to man these centers and provide administrative assistance to voluntary arbitrators.

Three hundred thirty-one (331) new voluntary arbitrators were added to the roster of arbitrators under a decentralized accreditation system. The Regional Branch Directors were authorized to select prospective arbitrators and conduct pre-accreditation trainings. This increased the number of voluntary arbitrators to 970.

Another important development for voluntary arbitration in this period was the promulgation of the *Luzon Development Bank* case in October 1996,[69] equating the decisions of voluntary arbitrators with those rendered by the RTC Judges, thus giving the Court of Appeals concurrent appellate jurisdiction with the Supreme Court. This installed a new level of adjudication in the voluntary arbitration process.

1999 to present

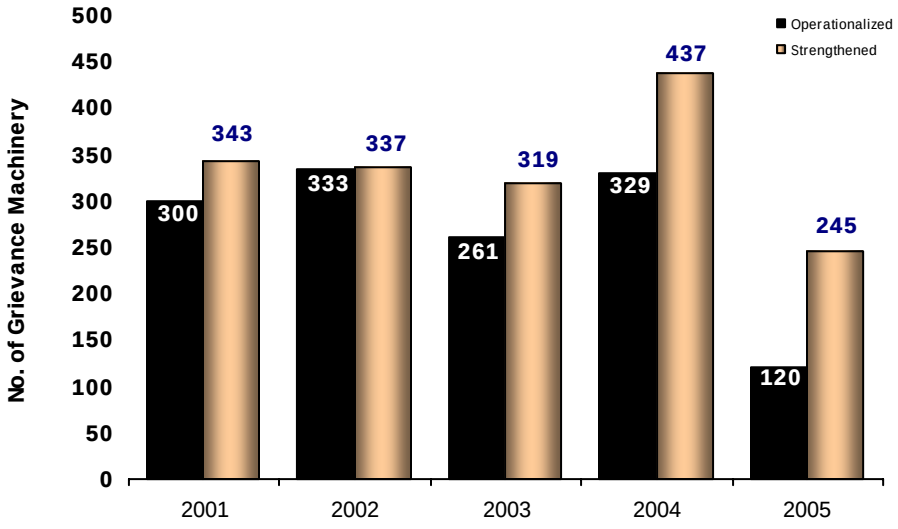
From 1999 to 2000, case submission reached a plateau with 200 cases. The NCMB went back to basics in terms of strengthening plant-level bipartite mechanisms. Programs for the wider use of the grievance machinery as a voluntary mode of settling disputes were pursued. After all, effective grievance machineries translate into fewer cases that go into formal dispute settlement systems. The policy shift involving effective grievance handling and less case handling contributed to good workplace relations. Plant-level dispute resolution mechanisms were strengthened, thus preventing labor disputes from escalating into notices of strike/lockout or actual strikes/lockouts.

Since 2001, the Board assisted in the operationalization of 1,343 grievance machineries and the enhancement and strengthening of 1,681 others, to increase the number of functioning grievance machineries and maximizing the use of voluntary arbitration as the last step in the

[69] Infra note 81.

grievance procedure. Figure 2 shows the number of grievance machineries made functional and enhanced from 2001 to June 2005.

Figure 2. Number of Grievance Machineries Operationalized and Enhanced
2001 to June 2005



C. SOURCES OF VOLUNTARY ARBITRATION CASES

The Labor Code directs the adoption of provisions in all collective bargaining agreements pertaining to the establishment of a grievance machinery, including an arbitration clause for the adjustment and resolution of grievances arising from the application of the collective bargaining agreement and company personnel policies. Voluntary arbitration is the terminal step in every unsuccessful grievance proceeding.

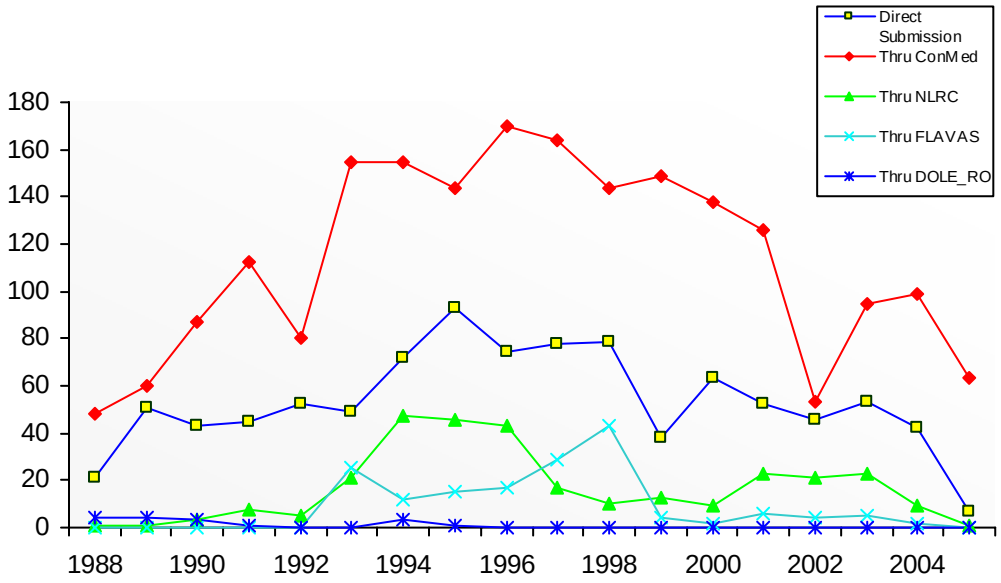
Despite these provisions, however, it is common to come across cases brought for conciliation without the benefit of the issues being discussed at the grievance machinery. It is therefore not surprising to see that most voluntary arbitration cases (60%) from 1988 to June 2005 were the result of conciliation proceedings. On the other hand, direct submission or those submitted to arbitration by the parties themselves only accounted for 27%. The situation is indicative of the need to make full use of the grievance machinery, and to submit unresolved grievances to voluntary arbitration as called for by CBAs and the Labor Code.

Case referrals from the NLRC numbered 301 or 8% of all sources. This did not include cases settled at the level of the NCMB technical personnel, with FLAVAS as an alternative source of VA cases. From its operationalization in 1993, a total of 164 FLAVAS cases were submitted to voluntary arbitration.

Table 3. Origin of VA Cases

Sources of VA Cases	1988-2005	%
Direct Submission	958	27%
Through Conciliation-Mediation	2,142	60%
Referral from NLRC	301	8%
Through FLAVAS	164	5%
Through DOLE-RO	16	0.4%
Total	3,581	

Figure 3. Trends in the Sources of VA Cases
1988-June 2005



1) Direct Submission to Voluntary Arbitration

This is the ideal process through which parties from organized establishments submit their unresolved grievances to a voluntary arbitrator or panel of voluntary arbitrators named/designated in the CBA or chosen through an agreed selection procedure.

- In case of failure by parties to select an arbitrator, NCMB assistance may be sought. The NCMB through its Regional Branches help the parties select an arbitrator using the procedure prescribed in the CBA or through an agreed process.

- Prior to Department Order No. 40-03, submission to voluntary arbitration cannot prosper in instances when one party refuses to submit to VA despite the existence

of a voluntary arbitration clause in the CBA. Department Order No. 40-03 made these arbitration clauses operational by providing a mechanism for a "notice to arbitrate," to be served by the willing party upon the other. NCMB Directors can now appoint a voluntary arbitrator in case one party, for some reason, refuses to comply with their contractual commitments in the CBA.

2) Submission through Conciliation-Mediation Cases

If some of the issues identified and validated during the conciliation-mediation conference involved CBA or personnel policy enforcement and interpretation, these issues shall be deleted from the list of strikeable issues. For settlement purposes, they are treated as subjects of preventive mediation, but if no settlement is reached and there is a need for decision to resolve the issues, the conciliator-mediator is directed to facilitate submission of the case to voluntary arbitration.

3) Submission through the NLRC

Should a case arise out of the interpretation or implementation of the CBA and company personnel policies, labor arbiters have been directed under NLRC Memorandum Circular No. 02-03, series of 2001, to dispose of the case by referring the same to the grievance machinery or voluntary arbitration as may be provided in said agreements. This issuance invokes Policy Instruction No. 56, issued by then Secretary Nieves Confesor in 1993. P.I. 56 laid the following rules:

a. Termination cases arising in or resulting from the interpretation and implementation of collective bargaining agreements and interpretation and enforcement of company personnel policies which were initially processed at the various steps of the plant-level Grievance Procedures under the parties collective bargaining agreements fall within the original and exclusive jurisdiction of the voluntary arbitrator pursuant to Article 217 (c) and Article 261 of the Labor Code.

b. Said cases, if filed before a Labor Arbiter, shall be dismissed by the Labor Arbiter for lack of jurisdiction and referred to the concerned NCMB Regional Branch for appropriate action towards an expeditious selection by the parties of voluntary arbitrator or panel of arbitrators based on the procedures agreed upon in the CBA.

4) Submission through FLAVAS

The Free Legal Aid and Voluntary Arbitration Services or FLAVAS Program of the NCMB provides free legal aid and VA-related assistance to workers belonging to organized and non-organized establishments. Those assisted usually do not have sufficient funds to pay the costs of arbitration proceedings.

D. ISSUES SUBMITTED TO VOLUNTARY ARBITRATION

Table 4 is a summary of issues submitted to voluntary arbitration from 1988 to June 2005.

Majority of the cases (51%) involve the interpretation and enforcement of company personnel policies. Legislators correctly pointed out that company personnel policy comprise most of the issues brought to grievance proceedings, which include disciplinary actions and dismissal cases.

Table 4. Issues Involved in VA Cases (1988-June 2005)

Issues	1988-2005	%
Interpretation & Implementation of CBA	1,213	34%
Interpretation & Enforcement of CPP	1,832	51%
Unfair Labor Practice	80	2%
CBA Deadlock	92	3%
Wage Distortion & Other issues involving Wage and Salary Administration	321	9%
Interpretation of PIS	1	0%
Job Evaluation	7	0%
Others/Combination	35	1%
Total	3,581	100%

E. MERITS OF VOLUNTARY ARBITRATION

The advocates of voluntary arbitration envisioned the system to grow and develop into a mechanism which characterizes the voluntary nature of labor dispute settlement. This is a process derived from the mutual trust and respect of the parties not only because the Constitution or the Labor Code says so, but because there are practical reasons to make such an unequivocal choice. The challenge that voluntary arbitration faces today is how to shed off the "compulsion" tendency and clothe it with practical advantages inherent in the system.

1) Compatible with the free collective bargaining system

The process is more attuned to Philippine culture, which prefers a peaceful mode of dispute resolution through the help of a mutually-respected third party. As a mode of dispute settlement, it is compatible and consistent with the private character of collective bargaining. In fact, a grievance machinery with voluntary arbitration as the terminal step is the "judicial system" of every collective bargaining agreement.

Indeed, the collective bargaining process does not end with the conclusion of a CBA. It continues as a day-to-day process of implementing the CBA in accordance with the intent of the parties. Collective bargaining calls for the mutual adjustment of grievances by the parties, should differences arise in contract interpretation and implementation. Thus, without an efficient grievance procedure and voluntary arbitration system, the contract can be reduced to a mere scrap of paper, instead of being a source of stability in the relationship between contracting parties. It may become a very rich source of complaints, grievances and irritants.[70]

There has also been a trend with companies and unions resorting to voluntary arbitration more than once. In sales parlance, they are "repeat orders" indicating customer satisfaction. But there has been a slight downtrend in these "repeat orders", revealing either an emerging distaste for voluntary arbitration or a renewed capability to effectively handle plant level grievances by labor and management.

Table 5. List of Companies Repeatedly Submitting Cases to Voluntary Arbitration

REGION	1988-1994	1995-1999	2000-2005	TOTAL
NCR	88	104	103	295
CAR	4	5	7	16
I	1	2	1	4
II	2	6	0	8
III	15	16	9	40
IV	25	27	21	73
V	2	3	4	9
VI	2	6	8	16
VII	18	27	13	58
VIII	12	8	7	27
IX	1	2	1	4
X	7	6	2	15
XI	11	15	17	43
XII	6	12	1	19
XIII	0	0	0	0

2) Non-litigious, Non-adversarial, non-technical nature of proceedings

The process is a better alternative to the long and litigious process of compulsory arbitration, because it is not difficult to find a competent voluntary arbitrator who can resolve the dispute and have the expertise, time, and reputation for fairness.

Compared to litigation, the very private character of VA renders proceedings before the arbitrator less technical in nature.

[70] Laguesma, Bienvenido E., 1995. Speech during the 2nd Seminar Workshop on Voluntary Arbitration in the Public Sector, Calamba, Laguna.

The method of selecting voluntary arbitrators places the arbitrator in a good position to succeed in conciliating their differences. Should s/he fail, the arbitrator can also speed up proceedings by conducting informal hearings and satisfy the due process requirement without being saddled by strict observance of the rules obtaining in regular courts.

3) Speedy labor justice

Because the arbitrator is a private person, s/he has the time to attend to the case and adopt procedures that would not allow unnecessary delay and dilatory tactics like resetting and postponement of hearings.

On the average, it takes 51 days to decide a voluntary arbitration case from the date of case submission for decision. The entire duration of a voluntary arbitration proceeding is computed at an average of 171 days or nearly 6 months. There are isolated instances of very long pending cases, which are not the norm in the resolution of VA cases. Generally, more voluntary arbitrators are exerting best efforts to expeditiously resolve their respective cases.

Table 6. Average Duration to Decide VA Cases

Year	Entire VA Proceeding	No. of Decided/Settled Cases	From Date Submitted for decision	No. of Cases with available data
1988	86	38	39	16
1989	148	89	76	39
1990	173	114	77	59
1991	187	119	78	75
1992	211	150	69	93
1993	188	184	74	64
1994	164	259	42	113
1995	193	265	36	163
1996	174	275	31	210
1997	171	267	27	174
1998	173	260	38	139
1999	175	206	36	103
2000	160	173	39	82
2001	133	204	69	84
2002	152	197	34	98
2003	217	178	42	64
2004	188	149	41	72
2005	186	67	67	18
Total	**171**	**3,194**	**51**	**1,666**

It is worthy to note that the years involving quicker disposition of cases (1995-1997) corresponded to the highest number of cases submitted to voluntary arbitration.

4) Final and Executory Character of VA Decisions

Voluntary arbitration decisions are final and executory after 10 calendar days from receipt of the copy of decision by the parties, and shall not be subject to a motion for reconsideration.[71]

The *Luzon Development Bank* case in 1995, however, negated concepts of "finality" and "inappealability" when the award or decision of the Voluntary Arbitrator was equated with that of a decision by the Regional Trial Court. Henceforth, in a petition for certiorari, the Court of Appeals was deemed to have concurrent jurisdiction with the Supreme Court. While this ruling may unduly prolong the process of voluntary arbitration, it has been argued that the process will in fact expedite resolution of higher court review cases, since there are more divisions in the Court of Appeals to resolve VA cases. This presupposes that decisions of the Court of Appeals in such cases will no longer be appealed to the Supreme Court.

The Revised Procedural Guidelines in the Conduct of VA Proceedings provide that the filing of a petition for certiorari with the Court of Appeals or the Supreme Court shall not stay the execution of the decision, unless a temporary restraining order or an injunction is issued by the Court of Appeals or the Supreme Court pending resolution of such petition.[72]

5) Fair and Impartial decisions

The test of a good voluntary arbitration award is unqualified acceptance by the parties to the case. Acceptance can be inferred when no appeal is taken by either party during the prescribed ten calendar days following the release of the voluntary arbitrator's decision. This also means that the plaintiff and defendant agree to comply with the terms of the award without waiting for the coercive writ of execution. A motion for reconsideration filed during that period detracts from the acceptability of the award and diminishes its efficacy as a good arbitral award judgment.[73]

There are, however, a number of commentators who believe that real test of a good award is its affirmation by the Court of Appeals or the Supreme Court. Out of 2,921 voluntary arbitration decisions reported to the NCMB since 1988, only 600 or 21% were brought for review to the Court of Appeals and the Supreme Court. Forty-five (45) or 11% have been reversed while a huge number (356 or 85%) have been affirmed.

[71] Sec. 7, Rule XIX, Department Order No. 40-03.
[72] Sec. 6, Rule VIII, Revised Procedural Guidelines in the Conduct of VA Proceedings.
[73] Khan, Ismael G. Jr. 1996, *"Seven Qualities of a Good Arbitration Award"*, PAVA Journal, Vol. 1, No.1.

Table 7. No. of Cases Brought for Review at the Court of Appeals and the Supreme Court (1988-2005)

	1988-2005	%
No. of Cases Decided by the Arbitrators	2,921	
No. of Cases Appealed	**600**	**21%**
No. of Cases Resolved by the Courts	421	
Affirmation	**356**	**85%**
Reversal	45	11%
Withdrawn	12	2%
Amicably Settled/Remanded to arbitrator	8	2%
Pending	179	

According to Khan, the voluntary arbitrator must be conscious that his/her decision may be appealed. Fraud, abuse of discretion, excess or lack of jurisdiction, and an erroneous application of the law or established precedents are the usual grounds. The conscientious and knowledgeable arbitrator has to steer clear of this procedural minefield to ensure respect and obedience to the decision. The voluntary arbitrator will then ensure that the decision or award becomes final and executory and that appeal will become a futile exercise.

6) Economical

Considering expediency in the disposition of voluntary arbitration cases, the VA option is less costly than compulsory arbitration and a strike or lockout.

A nagging issue often raised regarding voluntary arbitration is the matter on costs. Legislative deliberations leading to RA 6715 indicated two reasons why VA failed in the 1970s and mid-1980s: (1) workers did not want to resort to voluntary arbitration because they cannot afford to pay the costs; and (2) delay in voluntary arbitration cases. In Senate Bill 360 (later incorporated with House of Representatives version to become RA 6715), there was an abandoned proposal to have government shoulder the costs of voluntary arbitration.[74]

a. The Special Voluntary Arbitration Fund

Congress tried to remedy the problem by setting aside a P15 million a year Special Voluntary Arbitration Fund (SVAF), basically intended to help the parties defray the costs of voluntary arbitration, including voluntary arbitration fees, and to provide a continuing professionalization program for arbitrators, labor, management, and the general public. Also, in order that the SVAF need not always to depend on regular

[74] Conference Committee on Labor on Senate Bill 360, 23 April 1988.

appropriations of Congress, the law included a provision stating that fees assessed and collected from every CBA registered shall accrue to the SVAF for the effective and efficient administration of the voluntary arbitration fund.

b. Voluntary Arbitration Fees

Currently, there is no fixed standard on arbitration fees and costs generally vary. In some cases, fees are viewed as exorbitant, but others saw no need to fix arbitration fees. As a general rule, this matter is left to the agreement of the parties taking into account the peculiarities of each case. In the absence of an agreement, the arbitration subsidy being provided by the Board serves as a guide in fixing fees. In many cases, the guidelines on voluntary arbitration fees for subsidy purposes becomes the final arbitrator's fee: P10,000 for simple issues of CBA interpretation and implementation, dismissal cases, and issues of interpretation and enforcement of company personnel policies, and P15,000 for bargaining deadlock issues and cases with combination of issues.

For a few arbitrators whose professional standing is long established and highly respected, their fees could be higher especially if the case is complex and the amount involved is significant.

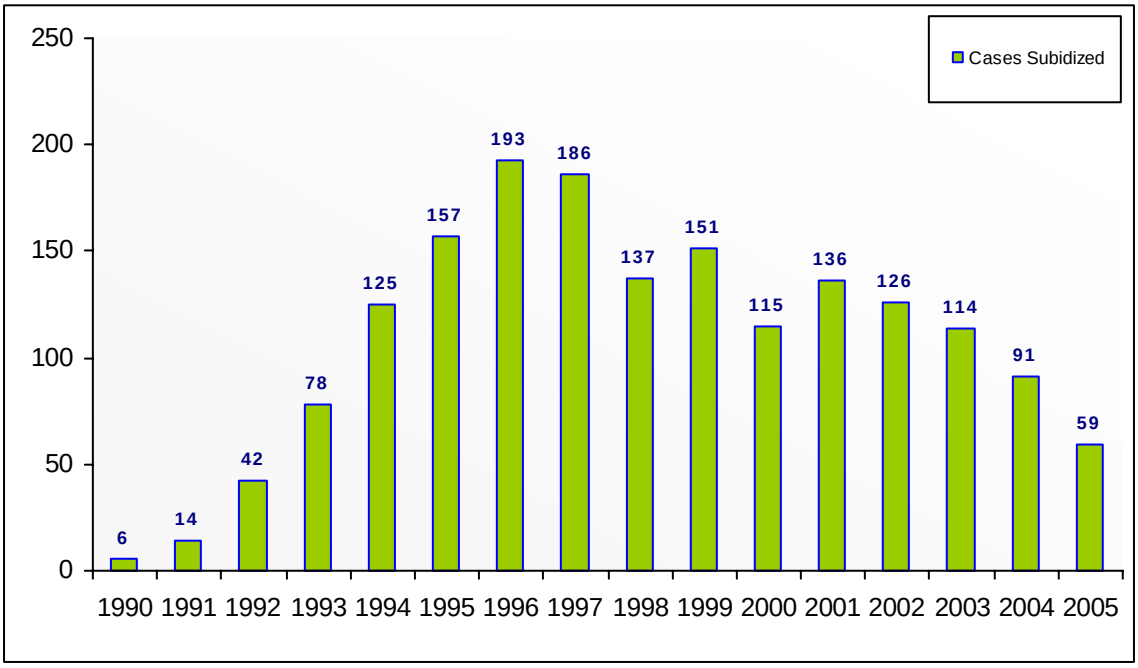
For those who cannot afford arbitrator's fees, the Special Voluntary Arbitration Fund, as provided under RA 6715, is available. Since 1990, 1,718 cases were subsidized with a total of P13.2Million.

Table 8. VA Cases Subsidized by SVAF (1990-June 2005)

	1990-2005	**%**
No. of Decided & Settled Cases	3,197	
No. of Cases Subsidized	1,718	54%
Amount of Subsidy Granted	P13,245,870	
Availed by Unions Only	928	29%
Availed by Management Only	55	3%
Availed by Both	735	43%

Figure 4. Trends in the Availment of SVAF Subsidy

1990 to June 2005



VI. Survey of Jurisprudence

A. NATURE OF A VOLUNTARY ARBITRATOR

The Supreme Court has declared that a voluntary arbitrator by the nature of her functions acts in a quasi-judicial capacity.[75] As such, she is a means by which government acts, or by which a certain government act or function is performed. The voluntary arbitrator performs a state function pursuant to a governmental power delegated to her under the provisions of the Labor Code. In one case the Court applied the Arbitration Law[76] by analogy and equated the award or decision of a voluntary arbitrator with that of the regional trial court,[77] though it must be emphasized that VAs are not part of a government unit or are not labor department personnel.[78]

B. FINALITY OF JUDGMENT

The nature of a voluntary arbitrator's functions determined whether her decisions should be subjected to the power of judicial review. At first blush, Article 262-A of the Labor Code appears to place a VA decision beyond the reach of judicial authority, when it states that the

[75] Oceanic Bic Division (FFW) v. Romero, No. L-43890, 16 July 1984, 130 SCRA 392, 400.
[76] Republic Act No. 876.
[77] Luzon Development Bank v. Association of Luzon Development Bank Employees, G.R. No. 120319, 6 October 1995, 249 SCRA 162, 169-70.
[78] Ludo & Luym Corporation v. Saornido, G.R. No. 140960, 20 January 2003, 395 SCRA 451, 458.

award or decision of a voluntary arbitrator shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties.

In *Oceanic Bic Division (FFW) v. Romero*,[79] however, the Court through Mr. Justice Gutierrez held:

> Inspite of statutory provisions making "final" the decisions of certain administrative agencies, we have taken cognizance of petitions questioning these decisions where want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice, or erroneous interpretation of the law were brought to our attention.

Prior to 1995, the mode of appeal from the decision of a voluntary arbitrator was generally known to be the extraordinary Rule 65 petition for certiorari.[80] But by virtue of the Supreme Court ruling in *Luzon Development Bank v. Association of Luzon Development Bank Employees*,[81] the Court through Mme. Justice Romero ruled that the Court of Appeals had concurrent jurisdiction over an appeal from such a decision. Hence, a petition questioning a VA decision or award was ordered remanded to the Court of Appeals for proper disposition.[82]

Under the 1997 Rules of Civil Procedure, VA awards, judgments, final orders or resolutions of "voluntary arbitrators authorized by law" are appealable to the Court of Appeals through a petition for review under Rule 43.

While Section 2 of Rule 43 states that appeals under the rule shall not apply to judgments or final orders issued under the Labor Code of the Philippines, the Court through Mr. Justice Kapunan in *Alcantara v. Court of Appeals*[83] relied on the *Luzon Development Bank* assertion that this exception clause applies when the legislative intent is to have decisions directly reviewed by the Supreme Court.[84]

A wrong mode of appeal (such as a Rule 65 petition for certiorari) may cause the VA decision or award to be final, thereby authorizing the VA to issue a writ of execution.[85] In addition, Section 12 of Rule 43 states that the appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just.

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[79] *Supra* note 75, at 399.
[80] Sime Darby Pilipinas v. Magsalin, G.R. No. 90426, 15 December 1989, 180 SCRA 177, 182.
[81] *Supra* note 77.
[82] *Id.* at 171.
[83] G.R. No. 143397, 6 August 2002, 386 SCRA 370, 379-80.
[84] Justice Kapunan cited that portion of the *ratio decidendi* in Luzon Development Bank that stated: "Nor will it run counter to the legislative intendment that decisions of the NLRC be reviewable directly by the Supreme Court …" Suffice it to state that Luzon Development Bank preceded the landmark ruling in St. Martin Funeral Home v. NLRC, G.R. No. 130866, 16 September 1998, 295 SCRA 494, where the Court en banc found no statutory basis for direct appeals from NLRC decisions to the Supreme Court.
[85] Manila Midtown Hotel v. Borromeo, G.R. No. 138305, 22 September 2004.

A VA decision or award becomes final despite a dissenting opinion irregularly issued by one panel member. The Court held that a dissenting opinion is not binding on the parties as it is a mere expression of the individual view of the dissenting member. What matters is the decision of the majority of members in a panel of VAs.[86]

Notwithstanding the reach of judicial review, decisions of VAs are afforded highest respect and as a general rule must be accorded a certain measure of finality,[87] as long as they are supported by substantial evidence.[88]

C. AREAS OF JURISDICTION

The dilemma of overlapping jurisdiction between voluntary arbitrators and labor arbiters has not escaped the Court's attention. At the outset, submission agreements to voluntarily arbitrate under Article 262 easily preempt any case falling within a labor arbiter's jurisdiction under Article 217.[89] This "rule of preemption" applies even if the parties bypass the CBA grievance procedure,[90] or in a case of a dismissed employee who initially waived the grievance procedure, filed a case with the NLRC, and had a change of heart and signed a submission agreement to voluntary arbitrate with her former employer.[91]

The difficulty lies in the knots entangling areas of "original and exclusive jurisdiction" claimed by two quasi-judicial entities – termination disputes and money claims under Article 217 and disputes involving interpretation and implementation of CBAs and company personnel policies under Article 261.

For money claims, the Court has ruled that voluntary arbitrators have original and exclusive jurisdiction over money claims arising from the interpretation or implementation of the collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies.[92]

In *Sanyo Philippines Workers Union-PSSLU v. Cañizares*,[93] the Court through Mr. Justice Medialdea held that illegal dismissal cases arising out of the enforcement of union security clauses are not within the jurisdiction of the voluntary arbitrator. Justice Medialdea maintained that only disputes involving the union and the company shall be referred to the

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[86] Coca-Cola Bottlers Philippines, Inc. Sales Force Union-PTGWO-Balais v. Coca-Cola Bottlers Philippines, Inc., G.R. No. 155651, 28 July 2005. In the questioned VA panel decision, the dissenting member noted his intention to file a separate opinion. The separate dissenting opinion was issued almost two months after receipt of the decision.

[87] Oceanic Bic Division (FFW) v. Romero, *supra* note 75, at 399; Mantrade/FMMC Division Employees and Workers Union v. Bacungan, No. L-48437, 30 September 1986, 144 SCRA 510, 513.

[88] Continental Marble Corp. v. NLRC, No. L-43825, 9 May 1988, 161 SCRA 151, 157.

[89] San Jose v. NLRC, G.R. No. 121227, 17 August 1998, 294 SCRA 336, 349.

[90] Central Pangasinan Electric Cooperative, Inc. v. Macaraeg, G.R. No. 145800, 22 January 2003, 395 SCRA 720.

[91] Apalisok v. Radio Philippines Network Radio Station DYKC, G.R. No. 138094, 29 May 2003, 403 SCRA 238.

[92] San Jose v. NLRC, *supra* note 89, at 348-49, involving CBA retirement benefits.

[93] G.R. No. 101619, 8 July 1992, 211 SCRA 361, 372-73.

grievance machinery or voluntary arbitrators, considering Article 260 pertains to a grievance machinery and voluntary arbitration mechanism in a CBA involving the "parties" to such an agreement. Since the union and company have come to an agreement regarding the dismissal under the union security clause of the CBA, no grievance existed between the parties to the CBA that could be elevated to voluntary arbitration. Such a dispute should be settled by an impartial body, which was the NLRC.

In *San Miguel Corp. v. NLRC (San Miguel 1),*[94] the Court resolved a case involving union officers who were dismissed on the ground of redundancy. More than three months after their dismissal, the union officers filed a case for illegal dismissal and unfair labor practice before the NLRC. The company filed a motion to dismiss the complaint, alleging that the labor arbiter must defer consideration of the complaint until after the parties have gone through the grievance procedure in the CBA.[95]

The Court through Mr. Justice Hermosisima held that the labor arbiter had jurisdiction over this case, based on the following findings:

- No agreement between SMC and the union that would state in unequivocal language that they conform to the submission of termination disputes and unfair practices to voluntary arbitration.[96]

- The CBA provisions on job security could have activated the grievance machinery, but a request for reconsideration or review of a management decision to dismiss was required. No such request for reconsideration or review was made by the union.[97]

- Discharges due to redundancy can hardly be considered as a company personnel policy, and therefore need not be subject to the grievance machinery or voluntary arbitration.[98]

The Court likewise held that exoneration of the employer from the ULP charge will not necessarily remove the case from NLRC jurisdiction, considering jurisdiction over the subject matter is determined by the allegations in the complaint.[99]

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[94] G.R. No. 108001, 15 March 1996, 255 SCRA 133.
[95] The CBA provided that "wages, hours of work, conditions of employment and/or employer-employee relations shall be settled by arbitration." *Id.* at 136.
[96] *Id.* at 137.
[97] *Id.* at 138.
[98] The Court, citing Azucena, defined company personnel policies as "guiding principles stated in broad, long-range terms that express the philosophy or beliefs of an organization's top authority regarding personnel matters. They deal with matters affecting efficiency and well being of employees and include, among others, the procedure in the administration of wages, benefits, promotions, transfer and other personnel movements which are usually not spelled out in the collective agreement. The usual source of grievances are the rules and regulations governing disciplinary actions." *Id.* at 140.
[99] *Id.* at 143.

In *Vivero v. Court of Appeals*,[100] the Court passed upon an illegal dismissal case filed by a seaman against a shipping company and the manning agency. The seaman was a member of the Associated Marine Officers and Seamen's Union of the Philippines (AMOSUP), which had a CBA with the respondents that outlined a grievance procedure that culminated in voluntary arbitration.

The case was filed by the seaman before the Philippine Overseas Employment Administration (POEA), but the case was later referred to the NLRC for adjudication.[101] The labor arbiter dismissed the case for want of jurisdiction, invoking the grievance and voluntary arbitration mechanisms in the CBA.

On appeal, the Commission Proper reversed the labor arbiter and ruled that the seaman had exhausted his remedy by submitting his case to the AMOSUP grievance committee. Considering, however, he could not obtain any settlement in that committee, he ventilated his case before the POEA (subsequently the NLRC).

The Court through Mr. Justice Bellosillo ruled in favor of NLRC jurisdiction, based on the following reasons:

- Citing *San Miguel 1*, the Court pointed out that the need for an express stipulation in the CBA that illegal termination disputes should be resolved by a voluntary arbitrator, since the same fall within the special class of disputes that are generally within the exclusive original jurisdiction of labor arbiters by express provision of law.[102]

- While the parties did agree to make termination disputes the proper subject of voluntary arbitration, such submission remains discretionary upon the parties. A perusal of the CBA provisions shows that the provisions on job security state that disciplinary cases <u>may</u> be referred by the Master to the grievance machinery. This indicated an intention of the parties to reserve the right to submit the illegal termination dispute to the jurisdiction of the labor arbiter.[103]

- When parties have validly agreed on a procedure for resolving grievances and to submit a dispute to voluntary arbitration then that procedure should be strictly observed.[104]

The Court also had occasion to discuss the applicability of Policy Instruction No. 56. Justice Bellosillo did not apply this executive pronouncement because the case was a termination dispute, and did not involve the application, implementation, or enforcement of company

[100] G.R. No. 138938, 24 October 2000, 344 SCRA 268.
[101] Under Executive Order No. 247, series of 1987, the POEA had jurisdiction over illegal dismissal cases involving overseas Filipino workers. Such jurisdiction was later transferred to the NLRC by virtue of the Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act No. 8042).
[102] San Miguel v. NLRC (San Miguel 1), *supra* note 94, at 279.
[103] *Id.* at 279-80.
[104] *Id.* at 281.

personnel policies. In addition, it was pointed out that the matter of Policy Instruction No. 56 was never raised in their positions papers or their motion to dismiss.[105]

The Court also faulted the union for not informing the seaman of his option to settle the case through voluntary arbitration immediately after grievance proceedings failed. On the other hand, the shipping company and the manning agency should have timely invoked the CBA provision requiring the referral of their unresolved dispute to voluntary arbitration. The respondents also waited for nine months to move for the dismissal of the case before the POEA for lack of jurisdiction. Hence, respondents were deemed to have waived their right to question the procedure commenced by the complainant seaman. Both the union and the respondents were responsible for selecting an impartial arbitrator or for convening an arbitration committee, but neither made a move towards this end.[106]

Despite a seemingly ambivalent position relative to Policy Instruction No. 56, the Court could have alluded to this issuance in *San Miguel Corporation v. NLRC (San Miguel 2)*.[107] In this case, Justice Purisima dismissed the notice of strike filed by a union after it abandoned the third step in the grievance process involving redundancy dismissals. The Court ordered labor and management to complete the third level of the grievance procedure and proceed with voluntary arbitration if necessary.[108] While the decision was silent on P.I. 56, there was clear adherence to require further processing of a termination dispute at the grievance level.

In other cases, the Court proclaimed that union failure to object to an employee's termination or retirement did not place the dispute within VA jurisdiction, despite a grievance and voluntary arbitration mechanism in the CBA.[109] On the other hand, where the NLRC dismissed a case and referred a matter to the company grievance procedure, failure of the company to activate such a mechanism entitled the employee to re-seek recourse with the NLRC.[110]

In a case before the United States Court of Appeals (11th Circuit),[111] however, a suit for damages on account of negligence and unseaworthiness under American law (a boiler explosion in a ship in the Port of Miami killed 6 and injured 4 Filipino seafarers) and filed before a U.S. district court was dismissed. The Court affirmed voluntary arbitration clauses in the POEA-approved employment agreements, which resulted in the selection of a VA by the NCMB.

Finally, within the framework of company personnel policies as defined in *San Miguel 1*, the Court in *Union of Nestlé Workers Cagayan de Oro Factory v. Nestlé Philippines, Inc.*[112]

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[105] *Id.* at 282.
[106] *Id.* at 283.
[107] G.R. No. 99266, 2 March 1999, 304 SCRA 1.
[108] *Id.* at 10.
[109] Pantranco North Express v. NLRC, G.R. No. 95940, 24 July 1996, 259 SCRA 161; Maneja v. NLRC, G.R. No. 124013, 5 June 1998, 290 SCRA 603; Atlas Farms Inc. v. NLRC, G.R. No. 142244, 18 November 2002, 392 SCRA 128.
[110] Atlas Farms Inc. v. NLRC, G.R. No. 142244, 18 November 2002, 392 SCRA 128.
[111] Bautista v. Star Cruises, No. 03-15884, 18 January 2005
[112] G.R. No. 148303, 17 October 2002, 391 SCRA 204.

ruled that a company drug abuse policy is a company personnel policy. Hence, disputes arising out of such a policy fall within the jurisdiction of the voluntary arbitrator.

D. PLENARY JURISDICTION TO INTERPRET

Generally, an arbitrator is expected to decide only those questions expressly delineated by a submission agreement. Nevertheless, in at least two cases the Supreme Court tackled the extent of a voluntary arbitrator's authority to resolve entwined issues in a dispute.

In *Sime Darby Pilipinas, Inc. v. Magsalin,*[113] the Court ruled that resolution of whether a performance bonus should be granted necessarily included determination of the bonus amount. Justice Feliciano explained that the since the CBA provision in question required payment of a performance bonus, "only the issue relating to the amount of the bonus to be declared appears important." He further asserted:

> … the question of whether or not a performance bonus is to be granted, still cannot be realistically be dissociated from the intensely practical issue of the amount of the bonus to be granted … Further, if petitioner Sime Darby's argument were to be taken seriously, one must conclude that the parties to the arbitration agreement intended to refer only a theoretical and practically meaningless issue to the Voluntary Arbitrator, a conclusion that we find thoroughly unacceptable.[114]

In *Ludo & Luym Corporation v. Saornido,*[115] the Court through Mr. Justice Quisumbing held that the issue of employee regularization is two-tiered. He expounded:

> While the submission agreement mentioned only the determination of the date of regularization, law and jurisprudence give the voluntary arbitrator enough leeway of authority as well as adequate prerogative to accomplish the reason for which the law on voluntary arbitration was created – speedy labor justice. It bears stressing that the underlying reason why this case arose is to settle, once and for all, the ultimate question of whether respondent employees are entitled to higher benefits. To require them to file another action for payment of such benefits would certainly undermine labor proceedings and contravene the constitutional mandate providing full protection to labor.[116]

Both cases allowed the Supreme Court to apply basic procedural tenets of expediency and non-splitting of causes of action in quasi-judicial proceedings conducted by a voluntary arbitrator.

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[113] *Supra* note 80.
[114] *Id.* at 184-85.
[115] *Supra* note 78.
[116] *Id.* at 458-59.

E. DUE PROCESS

The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense.[117] In the context of voluntary arbitration proceedings, this means compliance with the requirement of procedural due process as outlined in the Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings.

In *Unicraft Industries International Corporation v. Court of Appeals*,[118] the Court through Mme. Justice Ynares-Santiago nullified voluntary arbitration proceedings and remanded the case to the VA for reception of evidence. There was a failure to comply with the requirement to conduct an arbitration hearing under the guidelines, when it became clear that the aggrieved party received the notice of hearing only one hour after the supposed hearing. Justice Ynares-Santiago asserted that a decision or judgment is fatally defective if rendered in violation of a party-litigant's right to due process.[119]

On motion for reconsideration, the Court maintained deprivation of due process even if the parties submitted a position paper and supporting evidence. Justice Ynares-Santiago pointed out that the parties themselves signed stipulation before the Court of Appeals and resolved to give the aggrieved "their day in court" before the voluntary arbitrator.[120]
In *Ramoran v. Jardine CMG Life Insurance Company, Inc.*,[121] the Court held that questions regarding the composition and actuations of the panel of voluntary arbitrators must be supported by sufficient evidence. After having been afforded due process, a party cannot validly question the panel's jurisdiction after encountering an adverse judgment.[122]

F. MAJOR VA RULINGS

Aside from the aforementioned rulings on performance bonus and regularization benefit determination, the Supreme Court has also upheld voluntary arbitrators in key rulings, to wit:

- The fact that businesses are related, that some employees of one company are the same persons manning and providing auxiliary services to another, and that the physical plants, offices, facilities are situated in the same compound were not sufficient to justify the application of the doctrine of piercing the veil of corporate entity.[123]

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[117] Ramoran v. Jardine CMG Life Insurance Company, Inc., G.R. No. 131943, 22 February 2000, 326 SCRA 208, 220.
[118] G.R. No. 134903, 26 March 2001, 355 SCRA 233.
[119] *Id.* at 242-43.
[120] G.R. No. 134903, 16 January 2002, 373 SCRA 504, 506.
[121] *Supra* note 117.
[122] *Id.* at 220-21.
[123] Indophil Textile Mill Workers Union v. Calica, G.R. No. 96490, 3 February 1992, 205 SCRA 697.

- CBA "next of kin" provisions allowing nomination of a third degree collateral relative due to the fact that the employee's children are still minors.[124]

- Invalidating a dismissal on the ground of insubordination, where the employee's behavior did not constitute a "wrongful and perverse attitude", considering his honest belief that the memorandum regulating the hours of union office use was unlawful.[125]

- Payment of emergency cost of living allowance mandated by a wage order despite a CBA wage increase, pursuant to the creditability provision in the agreement.[126]

- Validity of a DOLE issuance mandating 200% premium pay for 2 unworked regular holidays (Araw ng Kagitingan and Maundy Thursday) falling on the same day.[127]

- Validity of a certain company policy prohibiting an employee from having a relationship with an employee of a competitor company.[128]

- Valid payment of relocation allowance under the CBA.[129]

- Valid withdrawal of certain company benefits.[130]

- Denial of company argument that 13th month, 14th month and financial assistance benefits were subject to deductions or pro-rating, or that these were dependent upon the company's financial standing.[131]

- Provision of grant-in aid for teachers on study leave, based on a CBA provision.[132]

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[124] Kimberly Clark Philippines v. Lorredo, G.R. No. 103090, 21 September 1993, 226 SCRA 639.
[125] Alcantara v. Court of Appeals, *supra* note 83.
[126] Mindanao Steel Corporation v. Minsteel Free Workers Organization (MINFREWO-NFL) Cagayan de Oro, G.R. No. 130693, 4 March 2004, 424 SCRA 614.
[127] Asian Transmission Corporation v. Court of Appeals, G.R. No. 144664, 15 March 2004, 425 SCRA 478.
[128] Duncan Association of Detailman-PTGWO v. Glaxo Wellcome Philippines, G.R. No. 162994, 17 September 2004.
[129] Babcock-Hitachi (Phils.), Inc. v. Babcock-Hitachi (Phils.), Inc. Makati Employees Union (BHPIMEU), G.R. No. 156260, 10 March 2005.
[130] American Wire and Cable Daily Rated Employees Union v. American Wire and Cable Co., Inc., G.R. No. 155059, 29 April 2005.
[131] Honda Phils, Inc. v. Samahan ng Malayang Manggagawa Sa Honda, G.R. No. 145561, 15 June 2005.
[132] Holy Cross of Davao College, Inc. v. Holy Cross of Davao Faculty Union-KAMAPI, G.R. No. 156098, 27 June 2005.

VII. Findings and Recommendations

1. All promotional efforts exerted by the NCMB were aimed at increasing acceptability of voluntary arbitration. There are various factors that can be given further attention so that these objectives may be attained:

   1.1. Development and sustenance of a comprehensive awareness-raising and institution/capability-building program

   Voluntary arbitration made progress at the time when the awareness campaign was at its peak. The tri-media campaign was very helpful in informing the public about the merits of the program. Hence, the NCMB should work out a comprehensive development plan relative to the promotion of grievance settlement and voluntary arbitration. These plans must be on a continuing basis.

   Success, however, depends on effective program design and implementation strategies. The design must consider national and plant level approaches.

   Thus, it is significant for the comprehensive plan to have strong budget support. The Special Voluntary Arbitration Fund as contemplated under RA 6715 must be made available. The NCMB should explore means on how the "authority to appropriate" funds for voluntary arbitration can materialize.

   1.1.1. At the national level, a media campaign must be sustained. Production of IEC materials and brochures on voluntary arbitration should be resumed, and the NCMB website should be improved to include significant information on voluntary arbitration that would stimulate the interest of the parties to try and avail of the system.

   The tri-media campaign should make capital out of the fairness and impartiality of VA decisions. The low appeal rate (21%) and high affirmation rate (85%) in the Court of Appeals and the Supreme Court speak well of the quality of VA decisions.

   1.1.2. At the plant-level, the following should be undertaken to make the program effective and efficient:

   - Strengthen the competence of NCMB facilitators
   - Improve training designs and modules to include latest trends and best practices

   1.2. Voluntary arbitration skills have to be continuously upgraded.

   1.2.1. The NCMB has yet to upgrade the accreditation system of voluntary arbitrators that will ensure commitment of the best persons available. This is

to avoid the experience of accrediting VAs without passing through a rigid screening and training process.

1.2.2. The NCMB has to maintain a corps of competent and trustworthy arbitrators so that voluntary arbitration can live on expediency, fairness, economy, and finality.

- Provision of a continuing and coherent capability-building and retooling program for arbitrators
- Development of a system for ensuring discipline among the ranks of arbitrators
- Development of an incentives and award program for arbitrators with exemplary performance

1.2.3. The NCMB needs to maintain simple, updated and streamlined voluntary arbitration procedures, especially in the matter of execution of decisions and awards.

The voluntary arbitration procedural guidelines were first prepared in 1989, and revised only in 2005. There should be a rules review initiative on a periodic basis.

2. The voluntary arbitration program relies largely on the strength of the legal framework and support from the government, unions, and management.

Despite constitutional preference for voluntary modes of dispute settlement, labor and management have mainly resorted to compulsory arbitration. Since 1989, Congress has failed to enact more elaborate measures to pursue the primacy of voluntary arbitration as a mode of dispute settlement.

While the Herrera-Veloso Law provided for a P15 Million Special Voluntary Arbitration Fund, it was just an authority to appropriate. The funding still fully depends upon Congress. Since 1993, funds for the program have been deemed incorporated in NCMB regular appropriations, a bleak proposition considering the NCMB budget dipped in the last two years.

Hence, the NCMB should strengthen participation in legislative undertaking to impress upon the lawmakers the needs of the voluntary arbitration program.

3. Voluntary arbitration has to sustain its merits

3.1. *Speedy labor justice*

Voluntary arbitration is a speedy mode of dispute settlement because it is less legalistic and less technical in nature. The average duration to dispose VA cases is less than six months (171 days) from the time of submission to voluntary arbitration. While this pace proves faster than periods of disposition in compulsory arbitration cases, there definitely is still room for improvement. After all, VAs generally have control of the proceedings. If s/he wants it expedited, s/he can discuss it with the parties, because voluntary arbitration does not follow the technical rules of law. The procedure is flexible, because the parties and the VA can always agree on the ground rules.

3.2. *Economy*

Early settlement of cases means lesser costs to the parties. Hence, the arbitrator should ensure that a labor dispute is resolved at the earliest time possible. This can happen with a corps of committed and competent arbitrators. In fact, the original intention of the framers of RA 6715 relative to the SVAF were to be observed, voluntary arbitration is cost-free. But the provision on SVAF became an authority to appropriate, and therefore voluntary arbitration has to wait for Congress year-in and year-out to appropriate funds for the Special Voluntary Arbitration Fund.

4. Survey of Jurisprudence

4.1. That VA decisions are subject to judicial review is well-entrenched, but the final and executory character of such decisions is still a key feature of the VA program. Hence, the revised VA guidelines emphasize that decisions or awards may be executed unless stayed by a temporary restraining order or writ of preliminary or permanent injunction from the Court of Appeals or Supreme Court. This is a policy that must be consistently implemented.

4.2. The Supreme Court is yet to categorically define the legal efficacy of Policy Instruction No. 56. A DOLE policy affirming Policy Instruction No. 56 could help. The standing Memorandum Circular 02-03, series of 2001, issued by the former NLRC Chairman invoked P.I. 56 in NLRC cases, but the legal and administrative efficacy of this document should be the subject of further study.

4.3. The Supreme Court carefully studied the intent of the parties with regard to submission of cases to grievance and voluntary arbitration mechanisms. The NCMB could develop a standard “agreement to arbitrate” clause that specifically enumerate types of disputes subjected voluntary arbitration. Adoption of this standard clause may render NTAs (notices to arbitrate) more viable to the parties.

4.4. The *Star Cruises* ruling from the U.S. Circuit Court of Appeals may favor voluntary arbitration of disputes involving sea-based OFWs.The effect of this ruling can be clarified in a policy issuance involving all relevant government agencies.

4.5. In various cases, the Supreme Court noted the lack of interest to implement an agreement to arbitrate clause on the part of either the employer or union party to the CBA. This bolsters the need for a renewed tri-media advocacy campaign for the VA program. Tripartite mechanisms under the auspices of the BLR and the NCMB could also play a pivotal role in this regard.

4.6. With the rising contribution of VA rulings to labor jurisprudence, continuing education and skills retooling or upgrading programs for VAs should be pursued.